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ABSTRACT

The investigation of civil rights violations for American Indians in Arizona and New Mexico covers Federal, state, and local employment; elementary, secondary, and higher education; and health needs, especially the Indian Health Service. It also discusses urban and reservation administration of justice and water rights. Conclusions and recommendations to improve Indian life end the report. (KM)

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THE SOUTHWEST INDIAN REPORT

A Report of the
U.S. Commission on
Civil Rights
May 1973

RC 007143

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan Agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;

study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

appraise Federal laws and policies with respect to equal protection of the laws;

serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and

submit reports, finding, and recommendations to the President and the Congress.

Members of the Commission:

Stephen Horn, Vice Chairman
Frankie M. Freeman
Maurice B. Mitchell
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, Staff Director

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LETTER OF TRANSMITTAL

U.S. Commission on Civil Rights
Washington, D.C. 20425
May 1973

The President
The President of the Senate
The Speaker of the House of Representatives

Sirs:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This report is the product of investigations conducted in New Mexico and Arizona, as part of a nationwide study of civil rights problems of American Indians. The report sets out the Commission's recommendations for action responsive to the civil rights problems which have been identified. The problems encountered by American Indians are both severe and complex, and the recommendations therefore require action from all levels of Government, as well as from the private sector.

We urge your consideration of the facts presented and recommendations made for corrective action.

Respectfully yours,

Stephen Horn, Vice Chairman
Frankie M. Freeman
Maurice B. Mitchell
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, Staff Director

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TABLE OF CONTENTS

Page

Letter of Transmittal -- ii

Acknowledgments -- iii

INTRODUCTION --- 1

EMPLOYMENT --- 10

Overview --- 10

Federal Employment --- 11
- BIA Employment --- 13
- IHS Employment --- 18
- Indian Preference at BIA and IHS --------------------------- 21
- Other Federal Employment ----------------------------------- 23

State Employment --- 25
- In Arizona --- 25
- In New Mexico -- 29

Local Government Employment ---------------------------------- 34

Employment in the Private Sector ----------------------------- 36
- Private Employment in Urban Arizona ------------------------ 36
- Private Employment on Reservations in Arizona -------------- 39
- Private Employment in New Mexico --------------------------- 47
- Federal Contractors -- 54
- Union Membership --- 59
- Buy Indian Act --- 60

EDUCATION -- 63

Enrollment --- 63

Number of School Years Completed ----------------------------- 65

School Achievement --- 66

Dropout Rates -- 69

Special Senate Subcommittee Report on Indian Education ------- 71

Page

The Phoenix Testimony -- 73
Powerlessness -- 74
Johnson-O'Malley Funds -- 78
Higher Education -- 80

HEALTH -- 84

Conditions and Care -- 84
Mental Health Conditions -- 86
The Indian Health Service -- 91
IHS Staffing -- 92
IHS Funding -- 95
IHS Services and Practices -- 97
IHS Diagnosis and Treatment -- 99
Indian IHS Advisory Boards -- 101
Urban Indians - Eligibility and Services -- 103
State and County Responsibilities -- 106

ADMINISTRATION OF JUSTICE -- 108

Conditions in Urban Areas -- 109
Police Brutality -- 112

Complaints from Reservations and Border Town Areas -- 116

Major Crimes Enforcement and BIA Law Enforcement -- 120

Correctional Facilities -- 122

WATER RIGHTS -- 128

CONCLUSIONS -- 142

RECOMMENDATIONS -- 149

INTRODUCTION

American Indians suffer much of the economic, social, and cultural damage that afflicts other minority Americans Their problems, however, are complicated by additional factors. While American Indians encounter pervasive discrimination not unlike that faced by other minority groups, their plight is traceable, in large degree, to the failure of the Federal Government to carry out its treaty obligations and statutory responsibilities.

Traditional history texts of nineteenth century and early twentieth century America celebrate the heroism of white settlers in the development of the continent and the subduing of "hostile" Indian populations. Expressions reflecting this attitude can be found on monuments throughout the Southwest. For example, in the town square of Santa Fe, New Mexico, the oldest settlement in the West, there is a commemorative inscription:

> To the heroes who have fallen in the various battles with savage Indians in the territory of New Mexico... .

Little is reflected, in texts or monuments, of the cultures and histories of the diverse peoples commonly known as American Indians. Less is mentioned of the suffering that Indians have endured and continue to endure. Only recently has a more accurate account of official brutality, displacement, and neglect become recognized and grudgingly acknowledged.

Most Indian tribes and pueblos are conquered nations. In exchange for their rights and privileges as fully sovereign entities, they have received certain guarantees and assurances from the Federal Government. Reservations were created to house tribes retaining a limited form of sovereignty. These reservations are semi-autonomous preserves upon which a combination of Tribal, State, and Federal law applies. Indian people received the Federal Government's commitment to provide certain services and act as trustee for Indian interests. By treaty, many tribes relinquished all legal claim to vast areas of land in return for health care, education, and other services.

This report does not attempt to detail the complex history of the Indian people and the American Government. Rather, it is an attempt to describe the present-day conditions of American Indians. It is the first in a series of reports to be prepared by the U.S. Commission on Civil Rights on the civil rights of American Indians. As part of this project, the Commission held public hearings in November 1972 in Albuquerque, New Mexico, and Phoenix, Arizona.

At these hearings, Indians and non-Indians from the private and public sectors testified under oath concerning employment, education, health service, administration of justice, and water rights. There are, of course, other problems important to American Indians. Many of these will be dealt with in subsequent Commission hearings. There was substantial Indian participation, including that of numerous Indian consultants, in determining priorities for the two Southwest hearings. This report is based upon those hearings and concurrent field investigations by Commission staff.

While the report does not purport to be exhaustive, it does portray Indian experiences described to the Commission during the hearings. As such, it is a chronicle of physical and psychological deprivation. In each of the five problem areas--employment, education, health services, the administration of justice, and water rights--the testimony of witnesses and the investigations of the staff revealed a neglect that was hardly benign.

Employment

Indians suffer, this report shows, from unemployment and underemployment. Their unemployment rate is staggering just under 40 percent in New Mexico and between 50 and 60 percent in Arizona. This contrasts with an unemployment rate among the general population of 5.4 percent in New Mexico and 4.1 percent in Arizona. The median income of Indian families is some $3,000 below that of the general population in New Mexico, and $4,500 lower in Arizona.

Federal agencies, with the exception of the Bureau of Indian Affairs and the Indian Health Service, do not hire Indians in any appreciable numbers, and the record of State and local governments is even poorer. Within BIA and IHS, Indians all too often are found in lower grade levels and have little opportunity for training, upgrading, or promotion.

The private sector was, with some exceptions, no better in providing employment opportunities for Indians. Even companies working on reservations often employ few Indians, and some doing work under Federal and tribal contract have had few Indian workers. As in government, Indians in the private sector are too often found in lower-paying, menial, and dead-end jobs.

Unemployment and underemployment among Indians may be attributed to several factors: bias on the part of employers; poor preparation on the part of Indians; geographical isolation of reservation Indians; failure of the Federal Government to enforce nondiscrimination laws effectively; and widely held negative stereotypes of Indian workers.

Education

Both the BIA schools and the public school systems are failing Indian children. Their educational attainment is two to three years below the general population's. The dropout rate of Indian children, particularly toward the end of high school, far exceeds that of the general population.

Bilingual and bicultural education are all but nonexistent. Until recently, the entire educational effort was aimed at teaching Indians the English language and "American" behavioral patterns. Even now, whether in BIA schools, Indian children are in a classroom environment controlled and dominated by non-Indians. Many Indian children must learn English as a second language if he or she is to survive.

The Indian Advisory Boards of the BIA schools are just that advisory. The school administration may or may not take their advice. Powerlessness is a major problem of Indian parents, who do not control the type of education given their children. Indian parents are unable to influence the educational programs of the public schools, for they are seldom elected to school boards. Most administrators and a majority of teachers in both the BIA and public schools, are Anglos. Many Indian children have few Indian success models from which to develop a strong, positive self-image.

Health Service

Indians have a high infant birth rate, a high infant mortality rate, and a short life expectancy. The Indian birth rate is 38.5 live births per thousand, but the national average is 17.5. This is coupled with an Indian life expectancy of 64 years, against 70 years for the general population. The infant mortality rate within the area served by the Albuquerque Area Indian Health Service is 37.1 per 1,000, contrasted with 22.4 for the U.S. population.

Tuberculosis still plagues American Indians. Their TB rate is nearly eight times the national average. Trachoma remains a serious problem for Indians in the Southwest. Alcoholism causes 6.5 times as many deaths among the Indian population as among the general population. The suicide rate is twice the national average.

The Indian Health Service--formerly a part of BIA but now a part of the Department of Health, Education and Welfare--is responsible for the health care of the Indian population. The report will show that it is seriously underfunded, understaffed, and lacks the capacity to meet the health needs of the Indian people adequately.

Off-reservation Indians frequently are neglected by county or local public health facilities which treat other indigent persons. The Indian Health Service has indicated that the entitlement of non-reservation Indians is in doubt. But even where entitlement is not an issue, priority goes to reservation Indians for health services.

The Administration of Justice

This report shows that for Indians justice does not have an even hand. On reservations, Indians are subject to Tribal and Federal law. Off the reservation, Indians are subject to the same coverage as all citizens. Indians complained that in "bordertowns" and rural areas near reservations law enforcement is harsher than in urban areas. The arrest rate on alcohol-related charges is much higher for Indians than non-Indians. In Phoenix, for example, where Indians comprise less than one percent of the city's population, about 25 percent of all males and

50 percent of all females arrested for alcohol-related offenses are Indian. Some witnesses testified that they believed Indians were arrested to provide cheap labor for the city.

Indians are concerned about major crimes on the reservations. BIA and the FBI are responsible for investigating major crimes on reservations, and witnesses claimed that neither has taken the responsibility seriously.

Water Rights

Water rights are extremely important in the West, and especially to Indians. Only if their water rights are respected and protected by the Federal Government can Indians maintain their reservation life style. Their grazing lands, their herds, their crops, and the game they hunt are dependent on an adequate supply of water.

As the population of the Southwest grows as new communities are built, the need for water becomes ever greater. Indians fear that their water rights are seriously threatened and that the Federal Government is not meeting its obligation to protect those rights.

This report shows that the Federal Government has been derelict in its duties in its "trust relationship" to preserve and protect Indian water rights.

Why Arizona and New Mexico?

Over 20 percent of the total Indian population of the United States resides in Arizona and New Mexico 95,812 in Arizona (about 5.4 percent of the population) and 72,788 in New Mexico (about 7 percent of the population). In each State over 50 percent of the Indian population is located in two rural counties near the two largest cities in the region. The Commission felt that these factors made Albuquerque and Phoenix appropriate sites for Commission hearings.

It is recognized that the problem of Indians vary from one tribe to another, and from one area of the country to another, but many problems are experienced in common. The problems faced by Indians in Arizona and New Mexico may not be identical, but it is obvious that they are representative of problems faced by Indians in the Southwest.

Although responsibility for these problems may be open to conflicting interpretations, the role of the Federal Government is major, and its responsibility for alleviating these problems is clear. The United States Government has the obligation, on the basis of treaties and specific statutory mandates to provide a full range of services to American Indians. The services which the Bureau of Indian Affairs provides include education, training, job placement, economic development, and land and water management. The Indian Health Service of the Public Health Service provides most of the medical care available to American Indians.

This report will focus on the provision of these services by the Bureau of Indian Affairs and the Indian Health Service, evaluating the effect of these services upon alleviating the serious problems faced by Indians. The report will also touch upon the relationship of State and local governments and private employers to the Indian peoples.

It is hoped that the report will stimulate increased public interest in the problems of American Indians, that it may help local, State, and Federal agencies improve their programs dealing with Indians, and that it may assist Indians in determining courses of action to make more secure their rights as the first Americans.

EMPLOYMENT

Overview

The American Indian in Arizona and New Mexico suffers from chronic unemployment and underemployment. This is true of both reservation and off-reservation Indians. In Arizona in 1972, the Bureau of Indian Affairs estimated that approximately 38,407 Indians living on reservations were in the labor force. Of this number, 15,520 or about 40 percent were classified as unemployed. Another 20 percent were employed only part-time, temporarily, or periodically.[1/] In New Mexico in 1972, the Bureau of Indian Affairs estimated that of the 28,876 Indians in that State's labor force, 11,047 or 38 percent were unemployed. Another 5,229 were classified as underemployed.[2/]

In both States, Indians are grossly underrepresented in virtually all segments of the work force--in the Federal, State, and local governments, as well as in the private sector. Indeed, the only places where Indians are not grossly underrepresented in both States are in those two Federal agencies--the Bureau of Indian Affaris and the Indian Health Service--which are required by law to give preference, in hiring and promotions, to Indians.

[1/] The Employment of American Indians in New Mexico and Arizona, U.S. Commission on Civil Rights Staff Report, November 1972, hereafter cited as Staff Report #3, at 2, 3.

[2/] The Phoenix Transcript at 212.

Most reservation Indians employed full-time are engaged in governmental and related work. This work is provided mainly by the Federal and tribal governments. Employment in the private sector in agriculture, construction, manufacturing, transportation, communications, and wholesale and retail trade is limited. However, on some reservations in Arizona (Navajo, Papago, and Fort Apache), employment in manufacturing and mining is significant, although small in relation to the reservation's population.

Federal Employment

For the majority of Americans who work for their national government, Federal employment means employment with any of a broad array of Federal agencies. For American Indians, however, it usually means working for the Bureau of Indian Affairs or the Indian Health Service. In Arizona, BIA in 1971 had 2,829 employees in the General Schedule (GS) pay system, and 60.6 percent of them were Indian. BIA also had an additional 1,112 employees in the Wage Board system, of whom 85.6 percent were Indian.[3] In New Mexico, BIA in 1971 had 2,854 employees in the GS pay system, of whom 58 percent were Indian.[4] In both States, although Indians constitute a majority of BIA employees, they are disproportionately concentrated in the lower wage, non-professional jobs.

3/ Staff Report #3 at 18. The GS, or General Schedule, pay system refers to a standardized Federal pay scale for white-collar employees. The GS system is computed on an annual basis, starting at $4,798 for a GS-1 and increasing at each succeeding GS level. For example a GS-5 pays $7,694 per year and a GS-11 pays $13,996 per year. The top level, GS-18, pays $36,000 a year. The Wage Board system is primarily for blue-collar Federal employees and is an hourly pay schedule. The hourly amount differs from region to region. It is calculated on the basis of the pay rate for equivalent work in each region.

4/ The Phoenix Transcript at 223, 226.

An examination of Indian employment by other Federal agencies in Arizona and New Mexico as of 1971 presents a dismal picture:

Federal Agency	Arizona		New Mexico	
	Total	Indian	Total	Indian
Agriculture Department	1,415	69	1,317	26
Air Force (civilians)	4,410	21	3,827	15
Army (civilians)			4,954	27
Atomic Energy Commission			913	13
Defense Supply			314	5
HUD	137	1	77	4
Justice Department			174	0
Navy (civilians)			122	1
Post Office			2,578	34
Transportation Department	366	1	969	7
Treasury Department			208	2
Veterans Administration			811	21

In 1971, Indian employees held about 15 percent of all the Federal jobs in Arizona. A large percentage, however, were concentrated in the lower grade and Wage Board levels. For example,

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5/ Staff Report #3. Table based on data in Report.

while Indians made up 17.9 percent of all the Federal employees in the GS pay system in Arizona, 54.8 percent of these employees were in grades GS-1 through GS-8.[6/]

Similarly, Indians constituted 20 percent of all the Wage Board workers in Arizona, and 40.7 percent of all the Indian regular nonsupervisory employees, 68 percent of the Indian regular Wage Board employees, and 19 percent of all the Indian regular supervisory employees were concentrated in wage levels 1 through 3. Over 50 percent of all Indians in other wage systems were earning below $6,999 annually.[7/]

Indians constitute 13.8 percent of all Federal employees in New Mexico, but they are relegated to the lower rungs of the employment ladder. They hold about 36 percent of all jobs from GS-1 through GS-4, but only 5.6 percent of the jobs in grades GS-9 through GS-11 and only 3.7 percent of all the GS positions in grades 12 through 18. These figures relate to overall Federal employment in New Mexico, and not to the employment figures for any particular agency.[8/]

BIA Employment

One might expect Indians to fare better in employment with the Bureau of Indian Affairs than with other Federal agencies, and they do. But, as was previously noted, they are concentrated in lower GS ratings, even in the BIA.

[6/] *Id.* at 16.

[7/] *Id.* at 16.

[8/] *Id.* at 16, 17.

In Arizona, Indians comprised 81.2 percent of all the GS personnel in grades 1 through 5, but white personnel constituted only 7.3 percent of employees in these grades. On the other hand, Indians were only 23.6 percent of all employees in grades GS-11 through 15, while whites constituted slightly more than 70 percent of all employees in these grades.[9/]

Slightly over 85 percent of all Wage Board workers employed by BIA in 1971 were classified as American Indian and only 12.5 percent were identified as white. Over 90 percent of all the white Wage Board employees earned more than $9,000 annually, but only 39.1 percent of all the Indian Wage Board workers made more than $9,000 a year.[10/]

The same grade level distribution holds for the Phoenix Area Office, which covers a multi-State area, including all of Arizona except for the Navajo Reservation. There were 1,218 GS employees employed by the Phoenix Area Office in 1972, and about 50.6 percent were Indians. Approximately 70 percent of Indian employees were in grades GS-1 through GS-5. Most of the non-Indians were concentrated in grades GS-9 and 11.[11/]

Wage Board employment totaled 332 Indians and 127 non-Indians. Over 51 percent of all Indian blue-collar workers earned less than

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[9/] Id. 18, 19.

[10/] Id. at 19.

[11/] Id. at 21, Table 10.

$9,000 annually, while over 86 percent of all the non-Indian Wage Board employees earned more than $9,000 a year.[12]

Although Indians constitute a majority of all the GS and Wage Board employees in the BIA in Arizona, they are disproportionately concentrated in the lower grade and Wage Board levels.[13]

Veronica Murdock, Vice Chairman of the Colorado River Tribe, testified that BIA positions are recognized by tribal members to be "dead-end" positions for Indians:

> There was one gentlemen [who] has been employed by the Bureau for 29 years. He's presently a GS-8. He has never had any training at all except for a very, very minor two-week training [course] that he received. And he has put in for promotions, and [he] has been constantly striving to get ahead,... 14/

The Phoenix BIA Area Director, John Artichoker, explained that the General Schedule grade level distribution within the Phoenix Area resulted from a combination of factors:

> All BIA employees must meet minimal Civil Service Commission standards regardless of whether vacancies are filled by initial appointment, promotion, reassignment, or reinstatement. Until recently, the number of Indians who could meet the standards for GS-9 and above positions has been considerably below that of non-Indians. This is particularly true with respect to the GS-9 level, the grade for journeyman professional teacher--which is the occupation found

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12/ Id. at 21, Table 11.

13/ Id. at 22.

14/ Phoenix Transcript at 45.

> to be in greatest incidence at GS-9. Turnover is slow in the higher grades, but as future vacancies occur they will for the most part be filled with Indians in view of Indian preference now applying to promotions, as well as accessions, and the fact that the technical and professional Indian labor supply is constantly growing. 15/

Things were not much different in New Mexico. During the Albuquerque hearing, allegations were made that obtaining employment with BIA is a problem for the American Indian, even when he is highly qualified by experience and education.

Don McCabe, a Navajo and the Director of the American Indian Master's in Business Administration program at the University of New Mexico, related his experiences in seeking employment with the BIA. 16/ He sought employment there after three years of military service and after eight years with an engineering firm, during which he rose to the position of department head. He had recently received a Bachelor's degree in Business Administration and applied for a position as a training officer listed at the GS-12 level. McCabe said that he had previously received 99 on the Civil Service examination (entitling him to a GS-7) and had passed the Management Intern Examination (entitling him to a GS-9). He was offered a GS-5 and declined. Mr. McCabe stated that he told the interviewer:

> You mark my word now....I know that if you get someone into this position it's going to be an Anglo...He's going to come in at an 11, and I'll guarantee you that within 6 months he will

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15/ Statement submitted for the record, John Artichoker, Area Director, Bureau of Indian Affairs, Phoenix Office, Dec. 12, 1972.

16/ Albuquerque Transcript at 324.

> be a 12.' With that I left. And it just so happened that a very short time afterwards I became acquainted with the person (an Anglo) who had filled this position....He told me that he had transferred from another agency, where he was a GS-9, over here at a GS-11, and within 3 months he was a GS-12. 17/

Frank Roberts, an Indian employee of the BIA, has a business administration degree and "approximately [illegible],000 hours" in computer programming. 18/ Mr. Roberts is employed as a computer programmer, but--unlike everyone else in the office--has never been given a better assignment. All of his supervisors, he said, 19/ are white.

Although Indian employees may turn to the complaint and grievance system, testimony indicated that, for some, harassment and abuse might follow. Both Mr. Roberts and Matthew Waconda, who also is an Indian BIA employee, testified that they were harassed after filing charges of discrimination in promotions. Mr. Waconda said:

> My superior came into my office and closed the door and was bringing about the situation concerning my complaint, and under EEO regulations I have the right to an employee representative at the time if my supervisor wanted to talk to me about it....He wouldn't let me have a representative. So I made efforts to leave my office. However, he restrained me...He pushed on a couple of occasions. 20/

Asked why so few Indians are employed at higher GS levels at BIA, Walter Olson, Albuquerque Area Director of the Bureau of Indian Affairs, stated:

17/ Id.

18/ Id. at 325.

19/ Id. at 326.

20/ Id. at 330.

> I think this is quite explainable. One reason is that, particularly in the Southwest, the educational opportunity has been very, very lacking until these last few years. In the 1950s was the first time really a lot of these Southwest tribes had an opportunity to even get a grade school and high school education. [21]

It should be noted that BIA has been primarily responsible for providing educational opportunities for reservation Indians. It also should be noted that the law requires that Indians be given preference in hiring and promotions at the BIA. Nevertheless, as indicated previously, Indians are clustered at lower grade levels within the BIA.[22]

Summarizing this state of affairs, Commissioner Maurice B. Mitchell remarked:

> Finally, I just want to express a deep personal disappointment at what I hear. The BIA should be the showcase in this country and in the Federal Government for the skills and administrative and technical abilities of the Indians. And in all the years of its existence it has clearly failed by the numbers alone to do that. That's deplorable. [23]

Indian Health Service Employment

Employment policies and practices of the IHS have come under criticism from Indians. Ms. Ella Rumley, Chairman of the Board of Directors of the Tucson Indian Center, explained that while Indians comprised a large percentage of the total employees of the Indian

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[21] *Id*. at 356.

[22] *Id*. at 328, 329.

[23] *Id*. at 335.

Health Service, they were generally confined to lower grades.[24/]
Ms. Julia Porter, a retired Indian nurse who also testified about Indian employment in the IHS, noted that:

> ...most of the supervisors are Anglos. You never see an Indian head nurse or a supervisor. You see a lot of janitors. You see a lot of low-grade employees over there.

Ms. Porter said that Indian employees in these low grades were treated poorly by the administration of the Phoenix Indian Medical Center and were, in effect, discriminated against. She cited as an example the "AWOL policy," in which an Indian employee could call in requesting sick leave, only to have it denied by the administration and be counted as "AWOL." Ms. Porter maintained that an Anglo employee could call in requesting sick leave under the same or similar circumstances and the request would be granted.[25/]

Other complaints concerning employement IHS practices were identified in the course of field investigations and interviews by the Commission staff; from additional testimony by Ms. Porter; and from the testimony of Ms. Rose King, Executive Director of the Phoenix Indian Center.[26/] One complaint was that the IHS ignored the "Indian Preference Clause," which is applicable to the employment policies of the IHS. Another complaint concerned low employee morale, reflected in the

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[24/] *Phoenix Transcript* at 85-86.

[25/] *Id*. at 70.

[26/] *Id*. at 58 et seq.

high turnover rate among IHS employees. Still another complaint concerned the IHS practice of showing favoritism to non-Indian employees (e.g., the sick leave and AWOL policies).

Incidents of discrimination and prejudice on the part of the white staff also were noted--such as the friction between non-Indian and Indian employees over applications of the Indian Preference Clause to promotions. This resulted in a protest petition from non-Indian employees. Complaints also were made that there had been threats on the part of the management against Indian employees who considered joining the employee union at the Phoenix Indian Medical Center. Furthermore, it was alleged that the union was controlled and administered by and for Anglos.[27]

Dr. Charles McCammon, Director of the Phoenix Area Indian Health Service, responded to some of those complaints in the course of his testimony. He explained that the reason there is a predominance of Indians in the low-level employment category results from the fact that non-Indians generally are not considered for these positions. Rather, only Indian applicants are considered, in an attempt to increase Indian employment. Dr. McCammon explained that there was not a manpower pool of qualified Indians available at the technical and professional levels. It was difficult, therefore, to find and hire

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[27] Id. at 71, 73. Also see: Interview by Jerry Muskrat, Staff Attorney, U.S. Commission on Civil Rights, with Ms. Julia Porter, Retired Indian Nurse, Aug. 15 and Aug. 17, 1972, available in Commission files.

Indian people for these positions. To correct this inadequacy, Dr. McCammon said, IHS has created programs for educational opportunity in the health professions. He specifically cited programs at the University of California at Berkeley and the University of Oklahoma, in which graduate education for Indians in health management are conducted.

Indian Preference at BIA and IHS

Statistics regarding BIA and IHS employment are distrubing in light of the fact that those agencies are subject to a statutory mandate for Indian preference in hiring and promotion. According to congressional mandate, an Indian has preference by law on initial appointment (in the Bureau of Indian Affairs and in the Indian Health Service) provided the candidate has established proof that he is one-fourth or more Indian and meets the minimum qualifications for the position.[28] This preference applies not only to initial employment, but also to re-employment, reductions-in-force, and promotions.

The Bureau of Indian Affairs did not interpret Indian preference to cover promotions until June 23, 1972.[29] Currently, Indian preference is limited to the BIA and the IHS. No more than one-half of one percent of all Federal positions are subject to Indian preference.

The original purpose of the preference clause was to assist Indians toward self-government by providing the education, training, and opportunity necessary to ensure an adequate and acceptable life.[30] Implicit in the self-government concept was that Indians should help make policy decisions within the Bureau. It was originally thought that Indian preference would be all-inclusive, eventually leading to the creation of an all-Indian Bureau of Indian Affairs. At present, however, about 46 percent of the positions in the BIA (nationally and locally) are filled by non-Indians, principally in the higher GS levels.[31] It has been alleged that BIA has created a system which prevents Indians from advancing to higher levels in the Bureau. An article entitled "No Room at the Top" concluded that the BIA has, in effect, discriminated against its own Indian employees in employment, promotions, and training--even though it has a clear legislative mandate, dating from the 1880s, requiring that Indians be given absolute employment preference within the Bureau. At present, because of various and often conflicting interpretations of Indian preference, and to some extent because of Civil Service rules and regulations, it is felt that qualified Indians have difficulty advancing within the Bureau.[32]

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[28] 25 U.S.C. 472, 48 Stat. 985, 986, as implemented by 44 BIAM 302.1.

[29] See memorandum of May 26, 1972 from the Assistant Secretary, Management and Budget, to the Secretary of the Interior recommending the approval of the promotions policy statement. The memorandum contains Secretary Morton's approval of June 22, 1972.

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[30] *Federal Policy of Indian Preference in Employment*, U.S. Commission on Civil Rights *Staff Report #1*, November 1972.

[31] Staff report prepared for Congressman Arnold Olsen, Montana, 116 Cong. Rec. 10372, Dec. 14, 1970.

[32] *Id.*

Additional information provided the Commission indicated that Indians are skeptical about the effectiveness of the Indian preference clause. Wesley Bonito, for example, stated that both the BIA and the Indian Health Service have failed to implement the clause fully in their employment practices on the White Mountain Apache Reservation. According to Mr. Bonito, Indians who are employed by the BIA and the IHS on that reservation are in the lowest GS levels. Furthermore, there are no Indians in the management levels of the Bureau or the IHS on the reservation, nor have training and upgrading programs been implemented to give the Indians an opportunity to move upward. 33/

Other Federal Employers

Although many Indians testified during the hearing that they have substantial employment problems with the Federal Government, Federal officials subpenaed to the hearing indicated that they were either unaware of these problems or, if they were aware, they were not doing much to alleviate them.

Charles Romero, Area Manager of the Civil Service Commission, when asked to comment on the extent of Indian employment, stated: "I think--in fact, I know--that we have a long way to go and that there needs to be a lot more affirmative action on the part of Federal agencies...." 34/

33/ Phoenix Transcript at 255, 256.

34/ Albuquerque Transcript at 343.

Questioned about the Civil Service Commission's responsibility for written examinations and the language problems of Indians, Mr. Romero admitted that he was not aware of any specific problem.

> Since I don't construct the written tests and--while we do grade them, we don't know who the Indians are. And we never have gone into looking to see whether the Indians specifically have had problems passing our written tests. 35/

The Commission's General Counsel asked Mr. Romero if it isn't part of his job to know whether Indians have special testing problems. Mr. Romero replied" "Now that you put the question, yes, I should know, yes." 36/

The Civil Service Commission also has responsibility for monitoring Federal agencies' affirmative action programs. According to Mr. Romero, however, that Commission has not yet provided an effective monitoring system with respect to Indian employment in Federal agencies. 37/ Indeed, Mr. Romero pointed out that of the 14 employees in his office, none is Indian.

The Director of the Albuquerque District Postal Service, Maurice Johnson, testified about the employment of Indians in this area. The Albuquerque District covers all of New Mexico, southwestern Colorado, and part of northeastern Arizona. As of October 19, 1972, he said,

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35/ Id. at 340.

36/ Id. at 341.

37/ Id.

there were 2,662 employees, of whom 30 were Indians.[38] Within the Albuquerque district, there are 37 postal facilities on pueblos and reservations, and of the 37 postmasters, 8 were Indian. In Gallup, an area of high Indian concentration, none of the 31 postal service employees was Indian. In Farmington, a similar area, there were 54 postal service employees, of whom one was Indian. In Santa Fe, there were 134 postal service employees, only one of whom was Indian.[39]

State Employment

If, as indeed they must, employment opportunities for Indians with the Federal Government must be rated poor, those with State governments border on the disgraceful. Neither the Arizona nor the New Mexico State governments emplcy a number of Indians that reflects their percentage of the population.

State Employment in Arizona

Although demographic data was submitted indicating an Indian employment percentage in the Arizona State government of 1.6 compared with a population percentage of approximately 5.4,[40] only two State agencies were the subject of specific testimony in the area of employment. They were the Arizona State Highway Department and the Arizona State Employment Security Commission.

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[38] Id. at 349, 350.

[39] Id.

[40] Staff Report #1 at 27.

Complaints concerning the State Highway Department, one of the few State agencies employing significant numbers of persons on and near Indian reservations, involved the allegation that it hired few Indians on its highway maintenance crews. This allegation took on added significance in view of another statement that the BIA road maintenance crews are almost entirely Indian.[41] Still other allegations were made that private contractors operating on reservations under State highway construction contracts hired few, if any, Indian employees and normally brought in work crews from the outside. The Arizona Civil Rights Commission provided statistics indicating that, in 1971, 74 out of 4,277 employees of the Highway Department were Indian.[42] It did not provide statistics on private firms operating under State Highway Department contracts.

Although these complaints and others involving the State Highway Department's employment practices were of concern to tribal officials, there was little indication that the tribes ever attempted to require affirmative or preferential hiring practices as a condition to allowing the State to construct roads or highways on reservations. Nor was there any evidence that this potential leverage was ever brought to the attention of tribal governments by the BIA or the Department of the Interior.

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[41] Interview by Michael R. Smith with Glen Whitman, Sept. 17, 1972, available in Commission files.

[42] Staff Report #1, Table 18.

A formal statement was submitted by the Arizona Highway Department, regarding its employment policies and those of its contractors. According to the statement, the State's highway system is comprised of 5,785 miles of interstate, primary, and secondary roads, 1,032 of which are on Indian reservations. Although the Department has a longstanding equal employment opportunity policy, it is "disappointed in the number of Indians we have been able to employ and are striving within our resources and current requirements to improve that situation."[43/] This effort includes the establishment of an Equal Employment Opportunity office which works with contractors to ensure compliance. Personal contacts, the statement continues, have been made with various Indian organizations for assistance in recruiting Indians.

The Highway Department's statement asserts that "The Department is a firm believer in on-the-job and up-grade training. It has a promotion-from-within program and encourages employees to qualify and apply for advancement under its program. The unwillingness of Indian employees to relocate has handicapped both our Indian promotion and recruitment efforts."[44/] To monitor performances of construction contractors, monthly reports are required indicating the racial breakdown of employees in each employment category. If a contractor does not meet minimum requirements he is required to state what efforts

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[43/] Statement of Arizona Highway Department, Submitted Nov. 15, 1972, at 2.

[44/] Id. at 6.

he will use to meet the percentage goal. If this is not forthcoming, he will be considered in noncompliance, and the Highway Department will issue a show-cause notice. So far, the Department has not issued any such show-cause notices. [45/]

Witnesses also complained about the performance of the State Employment Security Commission. Richard David, San Carlos BIA Employment Assistance Officer, testified:

> ...my personal experience with the State Employment Service in assisting people [in] getting into their bulletinized jobs has been almost zero accomplishment. In the last year I have helped what I considered to be -- and I use the word dangerously, I suppose--qualified Indians apply for jobs that were bulletinized through the State Employment Service. Frequently, they don't even receive a reply. And this holds true even for those jobs that are designated Emergency Employment Act and Public Service Career jobs. [46/]

Referring to the use of the term "qualified" as a device to exclude potential minority employees, Commissioner Freeman had previously stated:

> I have been on this Commission...for about 8 1/2 years. And I remember back in February of 1965 when the Commission held hearings in Jackson, Mississippi [and was told] 'We can't find any qualified...blacks'...And then in December of 1968 we went to San Antonio, Texas [and we were told] they couldn't find any 'qualified Mexican Americans or Chicanos.' And in February of this year

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[45/] *Id.* at 8.

[46/] *Phoenix Transcript* at 457, 458.

> we were in New York, and they couldn't find any 'qualified Puerto Ricans.' And today you can't find any 'qualified Indians'...What disturbs me is that the word 'qualified' only gets put in front of a member of a minority or an ethnic. The assumption seems to be that all whites are qualified. You never hear about anybody looking for a 'qualified white person'...And, you see, it seems that the word 'qualified' sort of dangles as an excuse for discriminating against minorities.[47]

State Employment in New Mexico

Indians constitute about 7 percent of New Mexico's population. Yet there were only 198 Indians employed in State agencies, or about two percent of the 10,557 in State employment as of December 1971.[48] Only 20 State agencies out of 73 employed any Indians at all. The majority were concentrated in three agencies: the Employment Security Commission, which employed 51 Indians in an overall staff of 765; the Health and Social Services Department, which had 46 Indians of a total of 1,544 employees; and the Highway Department, with 58 Indians of a total of 2,742.[49] As of November 7, 1972, the number of Indians in State employment had risen to 221 out of a total "in excess of 12,000."[50]

Relatively low numbers of Indians are employed through the civil service section of State employment, and Indians have only minimal representation on the 31 State boards and commissions whose members are appointed by the Governor. In a letter to the U.S. Commission on

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[47] Phoenix Transcript at 403.

[48] Albuquerque Transcript at 213.

[49] Id.

[50] Id. at 417.

Civil Rights, dated November 17, 1972, Governor Bruce King could name only 10 of these boards to which Indians had been appointed.[50a]

That Indian people feel such representation is important may be seen from the testimony of Hubert Velarde, President of the Jicarilla Apache Tribe, who told the Commission:

> One such problem of recognition involves representation and employment with our State Government and its agencies. For example, our reservation each year contributes very substantially to the fish and game income, as well as tourist income of the State. Hundreds of hunters come into our reservation each year to hunt for trophy elk and deer, each buying a State hunting license and, in most cases, non-resident licenses. Yet we have never had representation, ex officio or otherwise, on the State Fish and Game Commission.
>
> This is only one of many State agencies which are intricately involved in everyday Indian life but which are totally lacking in Indian representation. Such representation is long overdue and, for a State which capitalizes on its Indian population to the extent that this States does, is our due.[51]

While Indians are substantially underrepresented in the State work force, the State did not appear to be trying to change the situation. Although the Governor ordered State agencies in the spring of 1972 to come up with affirmative action programs, a number have not responded, as the following exchange between Commissioner Mitchell and Charles Spath, Director of the State Personnel Board, indicates:

[50a] Available in Commission files.

[51] *Id*. at 52 (emphasis added).

> COMMISSIONER MITCHELL: Now, have you had an acknowledgment from every State agency that they have an affirmative action program?
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> MR. SPATH: No, there are still about seven or eight State agencies that do not have a plan.
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> COMMISSIONER MITCHELL: When did you announce the plan?
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> MR. SPATH: The letter and the report went out in February or March of 1972.
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> COMMISSIONER MITCHELL: So this is now November.
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> MR. SPATH: Yes.
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> COMMISSIONER MITCHELL: So from February to November in one year some State agencies have just simply ignored or not even acknowledged receipt from you of an affirmative action program requirement?
>
> MR. SPATH: That's true. 52/

The State Personnel Board, Mr. Spath said, hired one Indian on September 25, 1972, to assist in recruiting Indians for State employment. 53/ Mr. Spath noted that the Board had trouble keeping an Indian on this type of job because once they were trained they were hired away. This prompted J. Richard Avena, Director of the Commission's Southwestern Regional Office, to ask Mr. Spath whether he thought "that maybe if you hired two you might have less problems, or three, or four, or five?" 54/

Moreover, Mr. Spath noted that the job of monitoring State agencies' affirmative action plans had been assigned to the State's Human Rights Commission. According to Mr. Spath, "they were not

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52/ Id. at 447.

53/ Id. at 515.

54/ Id. at 457.

adequately staffed...So you might say it really is an unrealistic expectation that a good job could be done at current funding in followup on the plan...[55/] Indeed, the Human Rights Commission has no power to order any agency to correct such problems, but has only thw power of persuasion."[56/]

Many State agencies obtain their employees from a register provided by the State Personnel Board, which administers tests that place people on the register. The testimony of Dr. Hazel White, a research analyst responsible for test development and validation for the State, indicated that she had done studies to determine whether a particular test was fair to "Spanish surnamed" people, but she had not yet done any such analysis with respect to Indians. She said: "There is a problem of identifying an Indian population" through such commonly used devices as checking surnames.[57/]

Problems of being placed on the job register are not the only barrier to Indian employment. As noted by Mr. Spath:

> With regard to laborers...we do have a class called utility workers that is used for the purpose by Highway and all other agencies. There's no list. Those agencies on that level, they hire people, they rate them, they rank them, and they put them on the rolls themselves...An agency like Highway can do outreach. They can put the Indians right on themselves. [58/]

[55/] *Id*. at 421.

[56/] *Id*. at 423.

[57/] *Id*. at 519.

[58/] *Id*. at 459.

Richard Shaffer, Director of Personnel of the State Highway Department, said that while the Highway Department was the largest State department, with 2,878 employees, the number of Indians employed by the department was only 60. Many positions, he said, required no more than physical fitness. Mr. Shaffer admitted that his department had no outreach program.[59]

David Urioste, Commissioner of the State Motor Vehicle Department, acknowledged that out of a total of 250 employees, there were no Indians. The General Counsel reminded the witness that his department was one of two which the Governor had directed to take special efforts to hire Indians. Mr. Urioste acknowledged this but admitted that his department had hired only one Indian since the Governor's directive (an Indian woman who remained on the job only two weeks). During the same period, the department had hired 97 persons. The General Counsel asked Mr. Urioste:

> Now, in view of the Governor's directive and in view of the fact that until just recently you had no Indian employees and you have field offices all over the State, do you think that is an adequate performance? 60/

59/ *Id*. at 443.

60/ *Id*. at 430-31.

Mr. Urioste pointed out that in several areas of high Indian concentration, such as Farmington and Gallup, the Department of Motor Vehicles contracted the operations to the cities and, theefore, had no jurisdiction as far as personnel is concerned.[61/] When Mr. Powell suggested that the State should not "duck its responsibility" in the personnel area by contracting out,[62/] Mr. Urioste responded, "I don't know if the city fathers in those localities would allow us to interfere with their operation."[63/] This exchange led Commissioner Mitchell to ask:

> So if any municipality had a rule they wouldn't hire an Indian, they wouldn't hire a Chicano, they wouldn't hire a black person,...that's okay with you, Mr. Urioste?

Mr. Urioste replied:

> I haven't looked at the personnel practices as far as those entities are concerned, sir. [64/]

Local Government Employment

The employment of Indians by city and county governments is minimal in Arizona and New Mexico. The Commission heard more of this problem at the Phoenix hearing than at the Albuquerque hearing, but staff investigations indicate that the examples which follow are typical of both States.

[61/] *Id*. at 432.

[62/] *Id*. at 433.

[63/] *Id*. at 434.

[64/] *Id*.

In Phoenix, Mr. Gus Greymountain, Community Education Leadership Specialist for the National Indian Training Research Center, told the Commission that only 51 Indians were employed by the city in 1970-71, the majority in the water and sewer departments. Among the important city departments and agencies which have few or no Indian employees are the city court, the police department, the fire department, the Human Relations Commission, and the city manager's office. 65/ Mr. Greymountain pointed out that each of these departments has an important impact on the Indian community

Ms. Carol Parvello, a behavioral consultant for the Tucson Indian Center, testified that although Indians make up a significant portion of the South Tucson population, there are no Indians in any visible positions in the city government. There are no Indian policemen, firemen, maintenance workers, or county board members. She added that the few Indians who do have jobs in local government do not serve in policymaking or planning positions. 66/

Indians also represent a small proportion of the total employment in school districts throughout Arizona. In 1972, the Arizona Department of Education reported a total public school enrollment of 468,927 pupils, of whom 22,754 or 4.8 percent were American Indian. Of the

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65/ Urban Indian Project.

66/ *Phoenix Transcript* at 78 et seq.

37,722 school employees, only 791 or 2.1 percent were Indians. American Indians represented only 3.6 percent of all noncertified employees. More important, Indians constituted less than 1 percent of all the certified teachers and approximately 1.5 percent of all the guidance counselors.[67/]

Employment in the Private Sector

The problems of finding employment in the private sector vary for reservation and off-reservation Indians, and are about the same in Arizona and New Mexico. As with government employment, Indians are underrepresented in the private labor force in both States. According to a 1970 survey conducted in Arizona by the U.S. Equal Employment Opportunity Commission, Indians constituted 1.6 percent of the work force of the 982 businesses surveyed. In New Mexico, they constituted 3.2 percent of the work force of the 466 firms surveyed. In both States, Indians were heavily concentrated in low skilled, poor paying jobs.

Private Employment in Urban Arizona

Testimony of Indian residents of Phoenix and South Tucson indicate that Indians in urban areas are excluded from employment opportunities by both local government and private employers. It is difficult to determine the exact nature of employment problems of urban Indians because urban Indian populations are extremely transient. This is particularly true in metropolitan areas, such as Phoenix and Tucson, which are adjacent to reservation areas.

[67/] Staff Report #3 at 32, 33.

Mr. Greymountain explained that the Indian population of Phoenix varies with the season and, consequently, population estimates vary widely. The 1971 census count for the Phoenix urban Indian population was 11,159. The Arizona State Employment Service estimated, on the other hand, 8,000 to 10,000 Indians. There is a seasonal flux of two to three thousand Indians in and out of the Pheonix urban area. This inability to ascertain definite figures for the Indian population also results from the fact that there is no concentration of Indians and, therefore, no visible Indian community. Mr. Greymountain maintains that in terms of the "numbers game" used by minority groups in competing for job opportunities, in both private and governmental employment, Indians are at a severe disadvantage.[68/]

Another serious problem for urban Indian residents arises from cultural unagressiveness. Mr. Greymountain characterized reservation Indians arriving in urban areas as representative of two basic groups: the "native group," which is generally elderly, poor, and often unwilling to take advantage of existing social services or to be assimilated into the non-Indian society; and the "modified group," which has severe language problems, little academic or vocational training, and retains strong ties with the reservation. Furthermore, Mr. Greymountain

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68/ Phoenix Transcript at 60.

explained, Indian attitudes towards individualism, competition, work habits, time, etc., contrast with those of Anglo employers, and with those of the Anglo, Chicano, and black employees with whom Indians must compete. Yet the State Employment Service, according to Mr. Greymountain, does little to overcome these difficulties and has no one assigned to work directly with Indian applicants.[69/]

Ms. Ella Rumley, an employee of the Indian Health Service, related similar problems in the South Tucson Indian community. She felt that Indians suffer severe handicaps in competing for jobs. Because of poor educational achievement, she said, Indians are reluctant to seek employment agressively. Another problem, according to Ms. Rumley, involves the attitudes of employers and the State Employment Service, which stereotype Indians into low-paying positions. Ms. Rumley, who is a registered nurse, said that when she went to the State Employment Service it would only talk to her about positions as a maid.

According to Ms. Rumley, Indians who have jobs are employed only in menial positions. In Tucson and South Tucson, she said, there are no Indian retail clerks, tellers, or secretaries, to her knowledge. Some Indians do farming, and most women who are employed work as domestic servants. Ms. Rumley said that another serious problem of urban Indians in finding and retaining jobs is the lack of cars or other forms of transportation (which is, as will be seen later, an even more serious problem for reservation Indians.

[69/] *Id.* at 63, 65, 67.

"The Phoenix Indian Community," a staff paper prepared for the Commission by Southwestern Indian Development, Inc., underscored many of the employment problems faced by Indians. It states that in Maricopa County (encompassing the Phoenix metropolitan area) there has been a decrease in total job placement of Indian people by the Arizona State Employment Service between 1960 and 1970. Seventy percent of the placements during this time were in categories of agriculture, trades, industries, and private households (domestic). Domestic employment placements "averages out to approximately 34 percent of the job placements available for Indians in the year 1969 and 1970, according to the report. [70/]

Private Employment on Reservations in Arizona

The economic gains of the State of Arizona in the last several years have generally by-passed the reservation Indians. Language difficulties, low educational attainment, geographical isolation, and little or no vocational training are in part responsible for the inability of Indians to share fully in the economic development in the State. Another important factor, is an incipient racial attitude on the part of employers which draws upon common stereotypes and serves as a justification for not hiring and promoting Indian employees.

[70/] Summary Report: The Phoenix Indian Community, prepared by Southwestern Indian Development, Inc., (1972), available in Commission files.

On all reservations studied in the State of Arizona a clear pattern emerged: Indians are denied equal access to jobs and job promotion in all levels of private industry located on or near reservations and in bordertowns surrounding reservations. Spokesmen from the Papago, Colorado River, Gila River, San Carlos Apache, and White Mountain Apache Reservations all attested to this condition. According to Floyd Mull, a member of the San Carlos Apache Tribal Council, the few jobs available in shops and stores, and other positions in the towns surrounding reservations are not available to Indians, even though Indians bring their trade to these towns. 71/

Several specific businesses located on an near reservations were the subject of testimony. Wesley Bonito, member of the White Mountain Apache Tribal Council and an officer of the National Congress of American Indians; Ronald Lupe, Director of Planning for the White Mountain Apache Tribe and past tribal chairman; and West Anderson, Vice Chairman of that tribe, testified about the Southwest Lumber Company. This is the only major source of private employment near the White Mountain Apache Reservation, which has an unemployment rate of approximately 70 percent.

For 25 years that company had contractual timber rights on reservation land. During the term of that agreement and since, the company hired few Indians--none, it was alleged, at supervisory or

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71/ Interview by Michael R. Smith with Floyd Mull, Nov. 11, 1972.

managerial positions. In part because of the company's employment practices, the tribe refused to renegotiate the contract when it expired. Subsequently, according to Mr. Anderson, the company's hiring practices with regard to Indians has become even worse.[72/]

The company's excuse for not hiring and promoting Indians was that Indians are not qualified for positions in the lumber industry and that they have undesirable work habits (i.e., they are unreliable and irresponsible). The tribe, however, is disproving this contention. It has itself been in the lumber business since 1963. The tribal enterprise consists of two sawmills which employ approximately 300 tribal members.

In the beginning, the tribal operation was ineffective because it was under BIA management.[73/] Mr. Anderson believes that the Bureau intentionally tried to make the operation unsuccessful (for example, mismarking trees so that the tribe would cut those which were not ready to be cut). The Bureau intentionally did this, according to Mr. Anderson, to retain the tribe's dependence on the Bureau.[74/] The tribe subsequently called in an expert lumber consultant who advised them that the Bureau's conduct was totally unjustifiable. During the past few years, however, the tribal industry has become self-sufficient

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[72/] Phoenix Transcript at 448-450.

[73/] Id. at 150-153.

[74/] Interview by Michael R. Smith with West Anderson, Oct. 5, 1972.

and has successfully trained Indian employees to qualify for all job categories--disproving private industry's contention that Indians are not qualified to work in the lumber industry.[75]

Richard David, BIA employment assistance officer at the San Carlos Apache Reservation, discussed the frustration of his attempts to place Apache Indians with local employers. In the past, he said, Indian applicants had been rejected at Inspiration Mines, located near the reservation, on the grounds that Indians were a poor risk because of high absenteeism. Consequently, Mr. David began to screen all the Indian applicants before they were sent to apply for jobs at the mining company. The applicants continued to be rejected. Mr. David estimated that the mining company employs 1,500 workers, of whom less than 100 are Indian. He knew of no Indian foremen or supervisors at the mine.

In his 18 years as a BIA employee, Mr. David said, he has heard the same excuses from employers for not hiring Indians--poor work habits, tardiness, absenteeism, failure to call when a person is not coming to work, lack of aggressiveness, etc. Mr. David felt strongly that, although in individual cases these reasons may be justified, many Indians are denied jobs for which they are qualified because of this practice of racial stereotyping.[76]

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[75] Phoenix Transcript at 151. Representatives of Southwest Lumber Company appeared at the hearing, but due to the cancellation of the hearing their complete testimony was not heard. The company was provided with an opportunity to submit a statement for the record.

[76] *Id*. at 455 et seq.

Similar testimony was heard concerning Southern Arizona and the Papago Indians. The Papago Indian Reservation is, perhaps, the most economically deprived in the United States. It has a population in excess of 7,000 and covers 4,500 square miles. The average annual family income in the last year was $450. Contributing to this poverty are geographical isolation, severity of the desert terrain, lack of an economic base, and lack of modern conveniences such as roads, electricity, and telephones. A recent study showed that on the reservation only 16 telephones exist outside the capital of Sells. There was no high school education available on the reservation until 1970.[77/]

Tony Escalante, as the Papago Tribal Labor Coordinator, has the responsibility of seeking employment opportunities for tribal members with local employers surrounding his reservation. He was involved in the preparation of a recent study which documents the lack of opportunities for Indians in private industries. That study found that Indians hold 326 of the 707 jobs on the reservation--principally with BIA, the Indian Health Service, and the Papago Tribal Council. However, of the 2,500 jobs located in bordertown communities where Indians trade, Indians hold only 60 jobs. Three major towns--Casa Grande, Gila Bend, and Buckeye--border the reservation. In Buckeye, for example, the survey showed this employment pattern:[78/]

77/ *Id.* at 371 et seq.

78/ *Proposal to Provide a Comprehensive Manpower Employability Status Report and Design and Adult Basic Education Assisted Vocational Education Program to Train Papago Indians for Employment in Mines and Related Fields*, prepared by Economic & Manpower Corporation for the Department of the Interior (1972).

BUCKEYE	NUMBER OF EMPLOYEES	NUMBER OF INDIANS
Buckeye Industries	225	0
Arizona Mach. Co.	16	0
Buckeye Auto Parts	3	0
O'Mally Buckeye Lumber	7	0
Buckeye Irrigation Co.	17	0
Goodyear Aerospace Corp.	1,462	0

The survey was prepared under contract by the Economic and Manpower Corporation (a profit-making organization concerned with the fields of human resources and economic development) for the Bureau of Mines, Department of the Interior, to analyze the employability of Papago Indians in the mining industry. Mining is extremely important to this area because of mineral deposits on the Papago Reservation. Recently, the tribe signed leases with Hecla and Newmont Mining Companies for the development of copper resources on the reservation. This presents the opportunity for over 1,800 jobs on the reservation within the next five years.[79/]

According to the study, few Indians currently participate in the mining industry. Sonya Shepherd, Project Manager for the Papago Mining Institute of the Economic and Manpower Corporation and one of the authors of the study, testified that the eight mining companies within commuting distance of the reservation have 8,000 positions. Only 204, or less than 3 percent, are held by Indians. This is in an area where the overall labor force is probably close to 20 or 25 percent Indian. Phelps-Dodge Company, located 12 miles from the

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[79/] *Id.*

reservation, has 96 Indian employees in its total labor force of 1,258. Hecla Mining Company, located on the reservation under a lease agreement with the tribe, has 50 Indian employees in a total force of 500. Although the company's tribal lease agreement contains no contractual obligation to hire a specific number of Indians, the tribe had what it considered to be an oral understanding with the company that it would hire about 50 percent Indian employees.[80/] Despite the tribal lease and the company's location on the reservation, the labor force is less than 10 percent Indian.

As previously noted, the excuse private employers commonly give for not hiring Indians is that Indians are undependable and unreliable. This problem, in reality, is partly the fault of the serious lack of transportation within Indian communities. Attempted solutions to this problem have met with little cooperation from private employers. Witnesses explained that a shuttle service is privately operated between the Hecla Mining Company facility on the reservation and the closest bordertown, Casa Grande, 36 miles away, bringing in a crew of predominantly Anglo workers. No such shuttle service exists for the potential Indian labor force living on the reservation because, as representatives of the company told Mr. Shepard, it is not economically feasible and there are not enough Indians from the South to justify it.[81/]

[80/] Phoenix Transcript at 376-378.

[81/] Id. at 379.

Mr. Shepherd also stated that one of the biggest obstacles to adequate Indian employment in the mining industry is the absence of realistic and uniform employment standards. Some mines require a high school degree for common laborers; others do not. This requirement, according to Mr. Shepherd, is unnecessary and works to the disadvantage of tribal members because of their minimal educational level.[82/] Another eligibility standard used by employers is the number of jobs the applicant has held. If an applicant has held two or three jobs in the previous months, the mine may reject him. This requirement is discriminatory when applied to Indians who commonly have access only to temporary and transient employment.[83/]

Officials representing Phelps-Dodge and Hecla Mining Companies said that the figures offered in evidence regarding the number of Indians at their mines were substantially correct. D. H. Orr, Manager of Phelps-Dodge, stated that "Indians are treated like any other person" and that the number of Indians working at his plant "is merely an accident of the way Indians have come, presented themselves to us to seek jobs."[84/] The relatively small number of Indian applicants was attributed to road conditions and poor communications.

[82/] Id. at 381, 382.

[83/] Interview by Michael R. Smith with Tony Escalante, Aug. 16, 1972.

[84/] Phoenix Transcript at 417.

John Breen, employment agent for Phelps-Dodge, indicated that attempts have been made to recruit employees through the tribe. He said that such attempts, however, have not been altogether successful. He stated that Indian employees have not been promoted at Phelps-Dodge at a rate comparable to non-Indian employees, but was uncertain why this was. "That is something we are trying to study," he said, "and see if we can find out why...It might be their education or whether or not...they have applied or want that kind of training."[85/]

In answer to specific questioning by Commissioner Frankie M. Freeman, representatives of Phelps-Dodge stated that their company recognized that a portion of company-owned housing for Indian employees is substandard, but that an active program was underway to improve the housing and to integrate the company-housing community.[86/]

Private Employment in New Mexico

Indians seeking employment in the private sector in New Mexico run into the same difficulties as their counterparts in Arizona. Discrimination prevents many Indians from securing decent employment, and a lack of interest on the part of employers in taking affirmative action to recruit and train Indians aggravates the situation.

[85/] *Id.* at 421-423.

[86/] *Id.* at 434-435.

The Commission heard from a number of employment specialists, industrial personnel officers, and State and Federal officials. Bernice Kirk, a Jicarilla Apache who was employed by Southwestern Cooperative Educational Laboratories as a research assistant, testified that she was involved in a study on private employment in the Albuquerque area. The purpose of the study, which was funded by the Equal Employment Opportunity Commission, was to develop affirmative action techniques to increase access of urban Indians to private employment. A tentative finding of the project, Ms. Kirk said, was that private employers to a great extent felt that Indian employees presented a variety of problems. These included excessive absenteeism, language difficulties, educational deficiencies, instability because of alcoholism, religious activities, poor transportation, introverted behavior, and failure to meet the criteria for managerial, supervisory, and sales positions. On the other hand, Ms. Kirk said, some companies reported that Indian employees were hard-working and dependable, but then admitted that these employees were paid minimum wages.[87/]

Commission staff, in interviews with private employers, frequently encountered this kind of stereotyped view of Indians. Many employers, however, were entirely unaware of the plight of Indian people in the area. Some asked what they could do to change existing employment practices toward Indians. Testimony during the hearing also indicated

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[87/] *Id*. at 235-238.

that private employers were not addressing themselves to the unique problems of Indians.

Charles Canfield of Los Alamos Scientific Laboratory testified that while 100 percent of his company's work was done pursuant to Federal Government contracts, he employed approximately 53 Indians out of 4,400 employees. He attributed this to the fact that 40 percent of his staff are scientists and engineers and not many Indians have degrees in these areas. Asked if the remaining 60 percent of the positions at Los Alamos required college degrees, Mr. Canfield acknowledged that there were probably 1,200 to 1,500 that did not.[88]

J. Lynn Hendren, Secretary and Vice President of Springer Corporation, testified that his company employs 427 people, of whom only seven are Indians. While his company would like to employ more Indians, he said, it had made no effort to obtain recruitment assistance from BIA.[89]

David Tarbox, Director of Personnel for Sandia Laboratories, the largest private employer in New Mexico, said that of Sandia's 6,237 employees in Albuquerque only 44 were Indian.[90] In spite of this low number, the company's affirmative action program did not specifically address itself ot American Indians.[91]

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[88] *Id.* at 253.

[89] *Id.* at 267-270.

[90] *Id.* at 273.

[91] *Id.* at 286-87.

Albuquerque National Bank is one of New Mexico's largest banks, but its employment of Indians is low. According to George S. Jenks, Vice President of the bank, of approximately 600 employees only four are Indians. Mr. Jenks said:

> ...Very few Indians apply at our bank. And as to why they don't apply, I can only assume that they think it takes certain technical skills which we don't really require because we can train bookkeepers, we can train tellers, and so forth. 92/

Mr. Jenks testified that fewer Indians receive loans from the bank. The reason for this, he said, was "lack of stable income. And applying our rules of approval, lack of stable income is a disqualifying credit consideration." Mr. Jenks also stated during testimony that his bank was one of four co-trustees earning fees from the investment and management of a $5 million Indian tribal trust account.

Richard Avena, Director of the Commission's Southwest Office, asked Conrad Gutierrez, the Equla Employment Opportunity Officer of Los Alamos Scientific Laboratory, to comment on the fact that "Federal contractors and Federal agencies that have affirmative action programs deal primarily in the Chicano community, the Spanish speaking community, at the expense of the Indian community." The reply to Mr. Gutierrez may well be representative of the attitude of many employers in New Mexico:

> Now, I think, Mr. Avena, to answer your question, it is very interesting. When you have a group of activists in the distaff side who come in and want to be recognized and they want a greater

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92/ *Id.* at 283-284.

> portion of the pie, immediately following them comes a band, a group of Chicanos, and they want more representation because their ethnic proportion in the State is much greater. Following them come the Orientals. They want a portion of the pie. Following them comes the Indians. And since they live in the northern part of the State they also want a portion of the pie. And then behind them come the blacks, and the blacks also want a portion of the pie. [93]

There are several private employers in New Mexico who, with a concerted effort, have been able to employ Indian people with little difficulty.

Donald Cata, San Juan Pueblo Indian of RCK, Inc., a licensed general building contractor, testified that his company employs 60 Indians out of a total of 78 employees.[94] To date, he said, he has not experienced any problems of alcoholism, absenteeism, or instability. Mr. Cata suggested that other employers who are genuinely interested in the employment problem of Indians should contact the employment assistance department of the BIA, the State Employment Security Commission, and individual governors, councilmen, and other tribal leaders in the area.

Tom Watzlavick, personnel manager of Levi Strauss, the nationwide manufacturer of wearing apparel, said that 6 percent of his company's employees were Indian. He agreed that in his company, with training there are no "inherent limits to the Indian's ability to occupy any job."[95]

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[93] *Id*. at 300.

[94] *Id*. at 306.

[95] *Id*. at 312.

The limited employment of Indians in the private sector can be attributed, in part, to relatively minimal effort expended by the State and Federal governments to alleviate the situation.

The State's Employment Securities Commission has, as part of its responsibility, been placing jobless persons in private industry. It seems, however, that Indians have special problems in obtaining jobs in the private sector. Yet Paul Day, a Laguna Pueblo Indian and a supervisor for Industrial Placement for the State Commission, was asked "what special efforts are necessary and what efforts have been made or are being made to obtain employment for Indians by the State Employment Securities Commission." His reply was that there were "presently, none...."[96/]

Mr. Day then testified that there previously existed within the ESC a program called the Indian Human Resources Development Program, which he supervised. It was an outreach program for Indians living on the reservation, as well as for urban Indians. The program was phased out seven months ago, and now no such special effort is being made.

The Federal Government has done no better in dealing with the employment problems Indians have in the private sector. Tom Robles, Albuquerque District Director of the Equal Employment Opportunity Commission, noted that only 27 Indians were among the 651 complainants

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[96/] Id. at 382-83.

who filed charges with the EEOC in fiscal 1972, and was asked what EEOC had done to increase Indian employment in the private sector. He replied that he thought the EEOC had done "very little, if anything." He explained that he had submitted a proposal to his Commission, suggesting that it fund a program aimed at meeting Indian needs. Unfortunately, a lack of funds and a reorganization of the EEOC at the time let the proposal "go by the board."

Mr. Robles explained that some employers didn't know that, by an Act of Congress, they might give preferential treatment to Indians seeking employment "on or near a reservation." Other employers, stressing the vagueness of the term, have refused to give preferential treatment to Indians. Mr. Robles felt that his Commission could and should define "on or near a reservation," and reported that he had requested that this be done.

He was asked if the EEOC had acted upon any of the seven recommendations offered by Benny Atencio, Chairman of the All-Indian Pueblo Council, during the 1970 EEOC hearing in Houston. Mr. Robles replied, "none that I know of."

Mr. Robles concluded by saying that new companies coming into the area are more sensitive about reaching Indians than are the older, established firms. He added that the older companies felt they were practicing equal employment opportunity if they hired blacks and Chicanos and ignored Indians. Thus, he said, "the American Indian doesn't even get the crumbs, much less a piece of the pie."[97/]

Federal Contractors

All firms having contracts with the Federal government are required by law to have non-discriminatory employment practices and to engage in affirmative action programs to recruit minority persons. The Commission discovered widespread evidence that private construction contractors under contract with the Bureau of Indian Affairs have failed to provide adequate employment opportunities for Indians. In field interviews conducted by Commission staff on all reservations, concern was expressed about this problem. White Mountain Apache Vice Chairman West Anderson complained that construction contractors operating under Bureau contracts bring in workers from the outside to perform construction on the reservation, in spite of the fact that there are members of the tribe qualified to work on these jobs. According to Mr. Anderson, there is very little the tribe can do to improve this situation. He stated that he is not consulted, or even notified, when a contract is let--by the time the tribe is brought into the situation, the contractor has been selected and the contract drawn up. The tribe's signature on the contract is merely a formality.

Mr. Anderson said his tribe has attempted to bring this problem to the attention of the Bureau but has been shifted back and forth between the local office, the area office, and the Washington office. "It is hard," he said, "to find any individual to hold accountable." [98/]

Representatives of the Phoenix Area Office of the BIA responded to this assertion by stating that tribal leaders are provided ample opportunity to participate at an early stage of the contracting process. James Dunn, Phoenix Area Property and Supply Officer, stated that tribal leaders are invited, as a matter of course, to attend pre-construction conferences on all construction contracts affecting their reservations. Although some tribal leaders do attend these sessions, he said, many do not respond to the invitation. [99/]

Frank Peres has been the BIA road engineer at the San Carlos Apache Reservation for 12 years and is responsible for the road construction carried out by the Bureau on that reservation. According to Mr. Peres, virtually all the actual road construction is preformed by private operators, and their record has been very poor with regard to hiring and promoting Indian employees. This may be partially explained by the fact that these construction contracts, though prepared by the

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[98/] Interview by Raymond Cross with West Anderson, Sept. 15, 1972.

[99/] Statement submitted for the record, James Dunn, BIA, Dec. 11, 1972.

BIA area office in Phoenix, contain Indian hiring clauses which are vague and are almost completely unmonitored.[100]

Although such contracts formerly required "Indian preference," they now require preference for "local residents." They also contain a standard equal opportunity clause prohibiting contractors from discriminating "against any employee or applicant for employment because of race, color, religion, sex, or national origin" and requiring that the contractor take affirmative action to ensure equal employment opportunities. Other provisions of the contract provide that the standard equal opportunity clause is inapplicable where it conflicts with Sections 701(b)(1) and 703(i) of Title VII of the Civil Rights Act of 1964, pertaining to preferential treatment in employment for Indians residing on or near a reservation. Such a restriction, however, appears meaningless because the operation of the standard equal opportunity clause would never conflict with Title VII. That Title merely allows preferential hiring of Indians; it does not require such hiring. In Bureau construction contracts, there is a conspicuous absence of any provision giving the contractor any clear indication that he has an affirmative responsibility to hire and promote Indians preferentially.[101]

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[100] Interview by Michael Smith with Frank Peres, Sept. 11, 1972, available in Commission files.

[101] Standard Form BIA Construction Contract, provided by Frank Peres, available in Commission files.

Because of the ambiguity in the wording of the contracts, Mr. Peres feels that effective monitoring would be impossible. He said that in his 18 years with the BIA he has never known a construction contract to be cancelled or a Federal contractor to be ruled ineligible by the Bureau of Indian Affairs because of hiring practices. On the other hand, he said, there is no question that such contractors would be penalized for failing to meet contractual commitments regarding workmanship or quality of materials or similar requirements.[102]

BIA Area Office representatives admitted that no contracts had ever been suspended or contractors penalized for failure to employ Indians adequately. They stated, however, that this is because these contractors meet their employment obligations in this regard. The use of the term "local residents" rather than "Indian," according to John Artichoker, BIA Area Director, does not diminish the effectiveness of the clause because, as a policy matter, it is interpreted to mean "local Indian residents." The change in language came about in 1962 when the term Indian was felt to violate Federal civil rights laws. However, this decision regarding terminology was made prior to the passage of Title VII of the 1964 Civil Rights Act, which contains specific provisions authorizing preferential hiring of Indians.[103]

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[102] Interview with Frank Peres, supra, at note 292.

According to James Dunn, who is responsible for monitoring BIA contracts, the Area Office has received no formal complaint from a tribal leader during the past five years regarding the employment practices of private contractors operating on reservations. Monitoring employment practices, Mr. Dunn explained, begins with the pre-construction contractors conference, where employment obligations are discussed in detail. For each contract negotiated, a contracting officer's representative is appointed to submit reports during the contract. Statements showing the name, address, and social security number of each employee are submitted by the contractor and serve as a basis for monitoring. According to Mr. Dunn, there is a dire need for additional personnel to strengthen compliance activities. Yet, repeated requests to Washington for additional personnel have been unfulfilled.[104]

103/ Interview by Michael R. Smith with John Artichoker, BIA Area Director for Phoenix, Sept. 17, 1972.

104/ Statement submitted by James Dunn, supra at note 99.

Union Membership

Lack of union membership has also posed problems for Indians in private employment. Although Arizona is a "right to work" State, employers can effectively require union membership by following such practices as hiring through union halls. Richard David, San Carlos BIA Employment Assistance Officer, stated that in the past employers would reject qualified Indian applicants because they did not have a union affiliation.[105]

Glen Whitman, Gila River Tribal Manpower Coordinator, has faced similar difficulties. He said that in the latter part of October 1972, his tribe negotiated with National Housing Industries, Inc., a private contractor, for the production of housing on the reservation. During the negotiation it was orally agreed that the corporation would subcontract with a tribally operated construction company, thereby assuring Indian employment. This agreement was reached on the understanding that the absence of union membership would not interfere with Indian employment. A few weeks later, the tribe received correspondence from National Housing Industries indicating that they would not subcontract with firms that did not employ union members. The tribe, at the time of the Phoenix hearing, was undergoing negotiations with National Housing to correct this situation.[106]

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[105] Phoenix Transcript at 455, 456.

[106] Statement submitted for the record, Glen Whitman, Gila River Tribal Manpower Coordinator, Dec. 5, 1972.

Buy Indian Act

The Buy Indian Act, a Federal Act, authorizes preference in Bureau contracting for Indian owned and operated businesses.[107] Mr. Peres stated that with respect to road construction contracts the performance of Indian owned and operated construction companies has always been up to Federal standards and Indians have been ensured employment by these businesses. This experience, he feels, disproves private contractors assertions that qualified Indians cannot be found for road construction work on and near reservations.[108]

Until recently Floyd Mull, a member of the San Carlos Apache Tribal Council, was the owner and operator of one of the few Indian construction companies in the State receiving contracts under the "Buy Indian Act." According to Mr. Mull, a recent reinterpretation of the Act by the Bureau resulted in the demise of his firm and the defeat of the Act's purpose, which is to encourage the development of Indian enterprise. Mr. Mull explained that the Act was reinterpreted so that it no longer granted preferential contracting status to Indian owned companies. This decision, he said, resulted in the requirement that Mr. Mull's company be bonded at an amount equal to the face value of any contract received. Mr. Mull could not afford this and,

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107/ 25 U.S.C. 47, 36 Stat. 861.

108/ Interview with Frank Peres, supra, at note 292.

as a result, went out of business.[109]

Curtis Geiogamah, Assistant Area Director for the Phoenix BIA Area Office, explained the situation this way: The "Buy Indian Act" gives the Bureau authority to negotiate with Indian firms outside the competitive process. Accordingly, BIA can be more lenient and flexible with Indian firms about performance of various contractual requirements and obligations. Because of poor experiences under some contracts, the BIA Area Office, as a matter of policy, has required a more precise adherence to established standards by Indian firms. According to Mr. Geiogamah, the basic preferential contracting status for Indian firms under the Act remains unchanged.[110]

William Gremley of the Office of Federal Contract Compliance testified about the results of OFCC's Indian Special Emphasis Program, of which he was Project Director. Nineteen key reservation areas were selected for in-depth contract review. The reservations, which included the Papago, have approximately 100 contract facilities each of with work forces in excess of 100.[110a] Mr. Gremley summarized his findings to date by stating that basically the problem is "severe and appalling unemployment rates.... As a general rule, you can conclude [that the unemployment rates on reservations will be] 20 to 85 percent of unemployment." Mr. Gremley stated:

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[109] Interview with Floyd Mull, supra, at note

[110] Interview by Michael Smith with Curtis Geiogamah, Sept. 18, 1972.

[110a] Phoenix Transcript, at 390.

> We identified contractors for 19 reservations, a total of 91 with work forces ranging from 100 to 3,000. The total employment of these 91 facilities is approximately 40,000, and American Indians represent only 3.5 percent of that total employment." 110b/

Unemployment on these 19 reservations, according to Mr. Gremley, averaged 42 percent and ranged from 11 to 77 percent.

Mr. Gremley said attitude played a major role in the failure of employers to hire Indians in meaningful numbers--not an attitude of hostile prejudice as much as an attitude of "indifference."

> There might be a few, of course, who might be contemptuous and completely discriminatory. There might be a few...a very few... who would be positive in welcoming and who would take affirmative action. I haven't run across too many of those.

The witness also suggested that such indifference plays a role in the failure of labor union officials to recruit Indian members in unions and apprenticeship programs.

Testing, according to Mr. Gremley, is also a problem that American Indians face. Testing procedures all too frequently screen out, rather than screen in, Indian people. 110c/

110b/ Id. at 395.

110c/ Id. at 397.

EDUCATION

In his introductory statement at the 1969 hearings before the Senate Subcommittee on Indian Education, Senator Walter Mondale characterized the present educational system for the American Indian as a tragedy. He further stated, "it is a responsibility for which almost exclusive blame rests with the Federal Government. This is the only educational system in the country which is a Federal system, and I think that it probably is the worst system in the country."[111/]

This Commission heard substantial testimony at the Phoenix hearing about the educational problems of Indians in Arizona and, although there was no testimony on Indian education during the Albuquerque hearing, staff investigators did extensive field work on the problems of Indian education in New Mexico.

Enrollment

More than 44,500 American Indians attend public schools in New Mexico and Arizona. In New Mexico, Indians constitute about 7.5 percent of the public school enrollment and in Arizona, approximately 4.9 percent of the public school population is Indian.

About 8,100 Indian children attend public schools in the Albuquerque area. In the Navajo area, approximately 26,000 Navajos

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[111/] Hearing before the Subcomm. on Indian Education of the Senate Committee on Labor and Public Welfare, 91st Cong. 1st Sess., pt. 1, at 2, 3 (1969).

are enrolled in public schools. In the Phoenix area, about 9,200 Indian children attend public schools.[112]

The Indian school population in New Mexico is concentrated in three counties: Indian children constitute about 60 percent of the public school enrollment in McKinley, 51 percent in Sandoval, and 31 percent in San Juan County. In Arizona, most Indian children attending public schools are in Apache, Conconino, and Navajo counties. In Apache County they are almost 68 percent of the total school enrollment, in Coconino, 26 percent, and in Navajo, 36 percent.[113]

In addition to those Indian students attending public schools in the region, approximately 27,000 Indian children attended BIA operated boarding and day schools in Arizona and New Mexico in 1971.[114]

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[112] Staff Report #1 at Table 16.

[113] Staff Report #1 at Tables 14 - 16. The Navajo Reservation encompasses most of McKinley, San Juan (New Mexico), Apache and Navajo counties (Arizona), thus, the extremely high Indian student population in this area.

[114] Staff Report #1 at Table 16. In fiscal year 1971 there was a total of 190,174 Indian children, age 5 to 18, attending public, Federal, private, and mission schools in the United States. According to BIA statistics, more than half (63.3 percent) of all Indian children of school age (5-18) attended public schools. Of those enrolled in school (including those over 18), 68.8 percent attended public schools, 25.7 percent attended Federal schools, and 5.5 percent attended mission and other schools. (Statistics Concerning Indian Education: FY 1971, BIA, Office of Education Programs. At 1.)

Number of School Years Completed

A comparison of the median number of years of school completed by various population groups, 25 years and older in Arizona and New Mexico, shows a lower level for American Indians than for whites, Mexican Americans, or blacks. According to the U.S. Bureau of the Census, in 1970 the median number of years of school completed by the white population 25 years and older was 12.3 years. For Mexican Americans, the median number of years completed was 9, and for blacks 9.7 years. For Indians in Arizona the median was 7.8, and in New Mexico it was 8.[115/]

In reviewing the median educational attainment levels for American Indians, two things should be noted. First, the number of years of schooling completed by Indians varies from tribe to tribe. In New Mexico and Arizona, for example, the number of years completed by Indians living on reservations ranges from a low of 3 years on the San Felipe and Santa Ana Pueblos in New Mexico, to a high of 11.0 years on the Colorado River and Fort McDowell reservations in Arizona.[116/] Second, although low when compared with other population groups, the educational attainment level among some Indians living on reservations has been rising in recent years. On

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115 / Bureau of the Census, U.S. Dept. of Commerce, Census of Population: 1970, General Social and Economic Characteristics, Final Report PC (1)-C33 New Mexico.

116/ Staff Report #1 at Tables 17A, 17B.

the Navajo Reservation in 1969, for instance, the median number of school years completed by Navajo men under 30 years and women under 25 years old was 8; the median number for Navajo men and women over these ages was 5.[117]

School Achievement

Not only does the American Indian tend to have a lower level of educational attainment than other population groups, but the average performance levels of Indian children attending public schools are often 2 or 3 years below those of white children. In a nationwide educational survey in 1966[118] (the "Coleman Study"), the academic achievement of various racial and ethnic groups within grades 3, 6, 9, and 12 were compared. According to this study, American Indians in all achievement measures ranked behind white and Asian American students but ahead of Mexican Americans, Puerto Rican, and black students, in that order.

The Department of Health, Education, and Welfare re-analyzed the data used in the Coleman Study and estimated the grade equivalent scores for each population group in grades 6 through 12. It found that the difference between the performance of American Indians and that of white students widens with each succeeding year, especially between grades 10 and 12. This pattern was most pronounced in mathematics and least pronounced in reading. In mathematics, American Indians are 2.4 years behind white students in the sixth grade, and 1.7 years below the norm; but at grade 12 American Indians are 4 years behind white students, and 3 years below the national norm.[119] It was further noted that one crucial point in achievement seems to occur between the 9th and 10th grades. Between grades 6 and 9, Indian children are consistently one and one-half years behind in both reading and mathematics. In grades 10 through 12, they fall further behind each year.[120]

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[117] Navajo Manpower Survey. Employment Security Commission of Arizona. Arizona State Employment Service (1969) at 7.

[118] James S. Coleman, et. al., Equality of Educational Opportunity, Office of Education, U.S. Department of Health, Education, and Welfare, Washington, D.C. (1966). This survey obtained data on verbal ability, reading comprehension, mathematical ability, and general knowledge of current events.

In 1969, the New Mexico State Department of Education evaluated the achievement of 4,500 students in grades 5, 8, and 11, using the California Test of Basic Skills.[121] According to the survey, Indian students performed considerably below the national norm on all three measures of achievement: reading, language, and arithmetic. Indian students exhibited their lowest achievement levels in reading, and scored consistently below all other racial and ethnic groups in the other test components.[122]

119/ Staff Report #1 at Table 18.

120/ Id.

121/ Staff Report #1 at Table 19A, data taken from a report by the New Mexico State Department of Education Guidance Service Division, Results of the 1969 Assessment Survey: Grades 5, 7, 11.

122/ Id.

During the last week of January 1972, some 36,388 third grade students in Arizona were given the Metropolitan Achievement Test.[123/] Approximately 51 percent of those tested scored at or below the National Grade Equivalent (as identified by Harcourt Brace Jovanovich, Inc.). The median grade equivalent for those tested was 3.1. The test results showed that only 20 percent of Indian third grade students scored above 3.4, whereas 69 percent of the Asian American, 61 percent of the white, 29 percent of the Spanish surnamed, and 26 percent of the black students scored above 3.4.[124/]

A recent survey of five reservations in New Mexico and Arizona revealed that the median number of years in school ranged from a low of 7 years on the Papago Reservation to 11 years on the Laguna Pueblo. The Acoma, San Carlos, and Fort Apache populations over 15 years of age had a median of 9 years of school completed.[125/] Only 5.8 percent of the Indian males, and 6.2 percent of the Indian females in the sample population of this survey had completed 8 years of school. The rate for all U.S. Indian population groups in 1970 was 13.4 percent.[126 /] The survey also suggested that large numbers of

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[123/] Arizona Department of Education, 1971-72 Third Grade Reading Achievement Test Report (April 1972) at 9.

[124/] Staff Report #1, at Table 19B.

[125/] Benjamin J. Taylor, Dennis J. O'Connor, Indian Manpower Resources in the Southwest: A Pilot Study (1969), at 359. See also: Staff Report #1 at Table 20.

[126/] Staff Report #1 at Table 21.

Indian children fail to finish high school. For example, while 17.3 percent of the Indian males in the sample completed at least 3 years of high school, only 7.8 percent completed 4 years.[127/]

Dropout Rates

The dropout rates for Indian students enrolled in public schools is high compared to other population groups. A study conducted by the Southwestern Cooperative Educational Laboratory reported that the dropout rate was 30.6 percent for American Indian students nationwide between grades 9 and 12.[128/] This rate is somewhat higher than for students in general which was reported as 27.7 percent.[129/] Regionally, the dropout rate for American Indians attending public schools in the Southwest between grades 8 and 12 was 38.7 percent,[130/] which was 10.1 percent higher than the 28.6 percent rate for the general population in Southwest. According to a 1962 sample of eighth grade Indian students attending public schools, the dropout rate for Indians was 34.7 percent in Arizona, and 33.9 percent for New Mexico.[131/]

[127/] Id.

[128/] Charles F. Owens, Willard P. Bass, The American Indian High School Dropout in the Southwest, Southwestern Cooperative Education Laboratory, Inc., Albuquerque, New Mexico, January 1969.

[129/] Id.

[130/] Id.

[131/] Id.

During the 1970-71 school year in New Mexico, 911 Indian pupils in school districts funded by the Johnson-O'Malley program dropped out of school.[132/] In Arizona, during the 1970-71 school year, 841 Indian students dropped out of the State's public schools.[133/] The greater number of dropouts in both States occurred between grades 9 and 12. For example, in Arizona 516, or 61.4 percent, of all Indian dropouts occurred between the ninth and the 12th grades. Of this total, 60 Indian students, or 12 percent, were withdrawn from school by their parents, eight (1.5 percent) were expelled from school, six died, and 409 (78 percent) dropped out of school because of overage, employment, drinking, low achievement, and/or poor adjustment.[134/]

Indian children in Arizona and New Mexico, like other minority groups, face special problems that complicate their educational experiences. In many instances, they encounter new concepts, values, and attitudes when they enter school. In addition, many Indian children must learn English as a second language. A large proportion of the Indian children living in the Southwest have also grown up in isolation, both geographically and socially, and have had little or no experience with the larger society. These factors may contribute to the high dropout rates of Indian children.[135/]

[132/] Staff Report #1 at Table 22.

[133/] Annual Report of Indian Education in Arizona, 1970-71, The Division of Indian Education of the Arizona Department of Education, p. 18-19.

[134/] Id.

[135/] Id.

Special Senate Subcommittee Report on Indian Education

A recent report of the Special Senate Subcommittee on Indian Education cites additional problems in the education of Indian children. Some of the Subcommittee's findings in 1969 illustrate the low quality of Indian education. For example:

> Forty thousand Navajo Indians, nearly a third of the entire tribe, are functional illiterates in English.
>
> The average educational level of all Indians under Federal supervision is 5 school years.
>
> More than one out of every five Indian men have less than 5 years of schooling.
>
> Dropout rates for Indians are twice the national average.
>
> In 1953, the BIA began a crash program to improve education for Navajo children. Between then and 1967, supervisory positions in BIA headquarters increased 113 percent; supervisory positions in BIA schools increased 144 percent; administrative and clerical positions in the BIA schools increased 94 percent. Yet, teaching positions increased only 20 percent.
>
> Only 18 percent of the students in Federal Indian schools go to college; the national average is 50 percent.
>
> Only 3 percent of the Indian students who enroll in college graduate; the national average is 32 percent; and

> The BIA spends only $18 per year per child on textbooks and supplies, compared to a national average of $40. 136/

The Subcommittee noted that Indian children, more than any other minority group, were prone to see themselves as inferior and "below average" in intelligence. 137/

Concerning the quality of education in BIA schools the Subcommittee stated:

> A great proportion of the teachers in the BIA system lack the training necessary to teach pupils with the linguistic and economic disadvantages of the Indian child successfully. Only a handful of the Bureau's teachers are themselves Indians. Although some bilingual Indian teaching aides are employed, virtually no non-Indian teachers learn to speak an Indian language, nor are they given formal help to do so. Many tend to take little interest in intellectual and artistic achievement, and therefore fail to stimulate the development of intellectual curiosity and creativity in their pupils. 138/

In relation to the curricula used in BIA schools, the Subcommittee noted:

> The curriculums used in Bureau schools are generally inappropriate to the experience and needs of the students. Those for teaching linguistic skills are particularly unsuitable, as they fail to respond to

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136/ Special Subcomm. on Indian Education of the Senate Comm. on Labor and Public Welfare, Indian Education: A National Tragedy - A National Challenge, Report No. 91-501, Nov. 1969, 91st Cong. 1st Sess., at xii-xiii.

137/ *Id.* at ix.

138/ *Id.* at 62-63.

> the Indian child's unique language problems. The teaching techniques commonly employed force upon Indian students a competition alien to their upbringings. 139/

Adult education on Indian reservations was also found to be wanting. The Subcommittee report noted that in addition to the 75,000 Indian adults who have not completed a fifth grade education, there are thousands more who have completed more than five grades, but who still cannot read or write English at a fifth grade level. 140/ Less than one-fifth of the adult Indian population has completed high school or its equivalent.

The Phoenix Testimony

Probably the most striking factor brought out about Indian education at the Phoenix hearing was the low self-concept or self-image which many Indian students have of themselves at all grade levels. Since it is generally agreed by most experts in education that self-concept is a key factor in success in education, it is important to understand why Indian students have such low self-concepts.

Ms. Joy Hanley, Director of Elementary Education for the Navajo Nation, testified that:

139/ *Id*. at 63.

140/ *Id*. at 64.

> The public schools are still pretending that they are teaching children that have come out of middle class white homes. They don't realize that there is a cultural difference, that there is a language difference, and that there needs to be special programs to really teach the kinds of things they need to succeed in the society and to give them self-confidence. The schools and the philosophy behind public schools are to build up the self-image of the white Anglo child and when you're trying to build up the self-image of the white Anglo child all you are doing is making the Indian child feel more inferior rather than building his image. 141/

Ms. LaVonne Three Stars, a counselor at the Phoenix Indian High School, also addressed her testimony to the low self-concept of Indian students:

> Well, I think that we have to look at historical reasons mainly, and those are that historically the BIA...has...negated everything Indian...'Cut your hair; its bad. Don't eat your Indian food; it's bad. Don't practice your Indian religion; it's bad.' The Bureau also now says 'This is no longer true. We don't do this. We agree the Indian culture is good.' But the negation is still there, only more subtle, but just as destructive. 142/

Powerlessness

Dr. Carl A. Hammerschlag, a psychiatrist and mental health consultant to the Phoenix Indian High School, disagreed with the use of the phrase "low self-esteem" to describe how Indian students

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141/ Phoenix Transcript at 203, 204.

142/ Id. at 224, 225.

feel about themselves, and described the problem in terms of feelings of powerlessness:

> I think that Indian people generally don't share that kind of feeling (i.e., low self-esteem). I think that they for a hundred years have been rendered essentially powerless by a system which essentially has made them institutionally dependent, and I think that we deal with symptomatic expressions when we talk about Indian education.
>
> You can't take care of people by giving them things without taking something away. And what we take away from them is some sense of their own worth, independence, and powerfulness.
>
> You emphasize the ability of the giver to give and the neediness of the receiver in having to receive. That's a re-creation of a master-slave syndrome.
>
> The difficulty that we see in Indian education is that our kids are an expression of that kind of problem. Nobody can take the power in their own hands to do things. And I think that no change in, for example, boarding schools is going to make any difference in terms of dealing with that problem. 143/

One of the reasons for the sense of powerlessness that Indians seem to feel is the fact that, for the most part, Indian parents have little or no control over the educational policies of the

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143/ *Id.* at 247-248.

schools which their children attend. Ms. Hanley addressed this problem in her testimony.

> The boards are only advisory. I think this is one of the biggest problems we have in the area of Indian education, in that Indian communities, Indian parents that live on reservations that have children in Bureau of Indian Affairs schools do not have the right that most non-Indian parents take for granted, and that is the right to control the education of their children.
>
> The advisory board has no authority. It is advisory only. Many of these advisory boards never see a budget. Many of the advisory boards have no idea really what the curriculum is. 144/

Dr. Hammerschlag also discussed the fact that Indians do not control their schools:

> I needn't go over with you the said history of Indian attempts at involvement in school boards, largely because they have been excluded, but secondly, because the parents themselves don't believe that they have anything to say, or that anyone will listen,...I think that the time

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144/ *Id.* at 205-206.

> has come for us to stop making those decisions for the people. We continue to perpetuate the myth that we know what it is that they need or want. The way to change it is to somehow allow them the opportunity of providing input and letting us know what they think we ought to teach.[145]

While much of the testimony indicated that the inability of Indian parents to control the educational policies of the schools is a key factor in the current crisis in Indian education, there are many other factors contributing to the poor performance of Indian students. Among these factors are: language barriers; lack of Indian teachers and counselors, the poor quality of teachers generally, a dearth of bilingual and bicultural programs, and the use of culturally biased tests.

With regard to language barriers, Ms. Hanley testified that one of the reasons Indian students perform so poorly is that they are already behind when they start school. She stated, "It's my feeling that in order to have quality education on reservations where you have children that only speak their native tongue, in order for those children to really learn, they are going to have to be taught initially in their native language."[146]

Discussing the lack of Indian teachers and the quality of teachers and counselors administering to Indian students, Ms. Hanley said, "On our reservation less than 1 percent of the teachers are

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[145] Id. at 251.

[146] Id. at 211.

Indian." The consequence of this, she explained, is that teachers, for the most part, are insensitive to the needs of Indian students. She further testified:

> I think you have to look to the Havighurst report which was a report done several years ago by a Dr. Havighurst out of the University of Chicago. One of the things that Dr. Havighurst reports is that 25 percent of the teachers that are presently teaching Indian children don't even like Indian children.[147]

The need for Indian teachers is further accentuated by the fact that only 1 percent of the teachers on the Navajo reservation where Ms. Hanley lives in Window Rock, Arizona, are Indian, and only 5 percent of the teaching staff at the Phoenix Indian High School are Indian. Thus, it is obvious that the BIA should give high priority to recruiting, hiring, and training more Indian staff. As Ms. LaVonne Three Stars testified:

> Only when we get staff who are appreciative of the Indian culture and will help the student recognize that he is good and that there are aspects of his culture that need to be preserved will Indian education begin to improve.[148]

Johnson-O'Malley Funds

In the course of their field investigations, Commission staff heard considerable criticism of the way in which Johnson-O'Malley funds were being used.

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[147] *Id.* at 202-203.

[148] *Id.* at 225.

Ms. Hanley described the purposes for which the Johnson-O'Malley funds are intended:

> ...Johnson-O'Malley is an act that came about in 1937, and the intent was to provide Indian children that were in the transition stage from either mission schools or BIA schools to public schools...with additional monies that they might need. The Federal Government realized that Indian children in this transitional state might have problems. 149/

She explained that these funds were intended to supplement local funds but that, originally, they often were used in lieu of taxes because Indian children had come from reservations that were not on the local tax rolls. She said that this was still the case in some States, despite the fact that in 1958 the Congress enacted Public Law 874 to assist local school systems whose student population was "impacted" with children from Federal installations. She testified that in New Mexico, the Johnson-O'Malley funds are used for supplemental expenses, "They pay for all children to eat....They get special supplies....They have special programs...." In Arizona, she said, these funds are "used specifically for general aid rather than supplemental."

She noted that Arizona also recieved impacted aid funds "so it's like the Indian children are bringing in double taxation, and

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149/ *Id*. at 200-202.

we are still not receiving supplemental programs for which the money is intended." She was asked if the Federal Government couldn't establish guidelines to eliminate this problem. She replied:

> ...we have been working trying to persuade Harrison Loesch [then Undersecretary of the Interior] to have the Johnson-O'Malley regulations put into the *Federal Register* so that may become regulations, but he's been very hesitant, and he has not proceeded to do so. 150/

Higher Education

While most of the testimony on education at the Commission hearing in Phoenix focused on Indian problems in elementary and secondary education, one panel testified concerning problems which Indians face in higher education.

Rick St. Germaine, Chairman of the Indian Student Association at Arizona State University, summarized the problems of Indian students at the university level:

> The Indian students at Arizona State University, as an ethnic group, have the largest dropout rate of any ethnic minority--or any group on the campus. The dropout rate at Arizona State University for Indians is 45.7 percent, taking into consideration the year 1971 through 1972.

150/ *Id.* at 200-202.

> In addition to this, we had the lowest grade point average of any other ethnic group. On a 4-point scale, our overall grade point average was 1.38. This might be seen as, you know, the basis for a high dropout rate.
>
> Now then, the school average for dropouts is approximately 30 percent.
>
> In addition to this, our students are faced with a number of not only social adjustment problems when they get to the university, but they have also got cultural problems that the counselors are very ill-equipped to handle. Counselors are not adequately trained in order to handle the special and unique problems that our Indian students are having.
>
> And, what's more, the university is making no attempt to provide these services. 151/

Of major concern to Indian students at the university level is the fact that the universities are not doing enough to recruit Indian students and Indian professional staff. This concern was reflected by William DeHaas, an Otoe Indian from Oklahoma and Assistant Coordinator for Student Affairs at Arizona State University. Mr. DeHaas noted that out of a student population of some 27,000 to 28,000 there were roughly 270 Indians, less than 1 percent. He added that the university had just begun to talk about special efforts to recruit Indian students. He said that there had been previous efforts "but they were not real efforts. They were haphazard and often conflicting and carried on as more of a token gesture." He noted that one person had made recruitment trips but that funds had run out.

151/ *Id.* at 273-274.

Mr. St. Germain said that the university did no better in employing Indians on the faculty and staff. He noted that, according to a report dated March 5, 1972, "the total employment by the establishment of Arizona State University for the year 1971-72 was 5,358, of which 17 were Indians." This is about three-tenths of 1 percent. He pointed out that the majority of these positions were semi-or unskilled laborers or operatives, two were professional, and one was an official -- "the coordinator of the Upward Bound Program for the Indian Division."[152]

The Commission noted that Indian students have difficulties in obtaining funds to pay for their education. Mr. DeHaas said that part of the problem was because colleges regarded BIA grants as a student resource rather than as "a matching source" for Equal Opportunity Grants, as called for in the Federal guidelines. He added that this deprives other qualified Indian students from receiving financial assistance because of the limited funds of the BIA. He noted that the announced 10 percent cutback of the budgets of all Federal agencies would "hit very hard in higher education budgets," and that the BIA would be able to make fewer grants. He stated:

> There has to be some kind of re-evaluation of the responsibilities of financial aid officers at universities in order to insure that Indian students get a fair shake of the EOG and national

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152/ Id. at 277-279.

> defense loans monies, and to refrain from considering the BIA grant as a student resource and call it a matching source as spelled out in the HEW guidelines.[153]

From the testimony gathered at the Phoenix hearing, the Commission was able to secure a general understanding of what Indian education is and how it fails to provide Indian students with the basic skills to survive in a modern technological society. What the Commission learned was well summarized in a paper submitted for the record by Dr. Hammerschlag. In that paper, entitled "Indian Education: A Human Systems Analysis," he summarized his feelings about Indian education:

> There are many Indian people who today still believe that education is a not so subtle attempt to sow the seeds of cultural dissolution and that schools are dedicated to the reformative aim of Indian annihilation. There are still rituals among tribes to cleanse their children of white contamination on their return from boarding school.
>
> Indian education as a body of pedagogical principles, philosophy or techniques, does not exist. Rather Indian education can be defined as the imposition of white American educational institutions upon American Indian communities. The crucial problem in the education of American Indian children is the general relationship between white society and the Indian people. This relationship frequently demeans Indians, destroys their self-respect and self-confidence, develops or encourages apathy and a sense of alienation from the educational process, and deprives them of an opportunity to develop the ability and experience to control their own affairs through participation in effective local government. [154]

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[153] *Id*. at 279-280.

[154] Dr. Carl A. Hammerschlag, M.D., "Indian Education: A Human Systems Analysis" at 3-4.

INDIAN HEALTH

Conditions and Care

The health status of American Indians is inferior to that of other ethnic groups in the United States.[155/] This is generally attributed to the Indian community's impoverished socio-economic condition, limited education, substandard housing, poor nutrition, lack of proper sanitation facilities, and inadequate health services.[156/] These generalizations apply to health conditions of the Indian community nationally, and specifically in this report to the Indian communities in Arizona and New Mexico.

For example, life expectancy for all Indians in recent years has been about 64 years as compared to 71 years for whites. The suicide rate (age adjusted) among Indians is twice as high as the total United States rate. The age adjusted homicide rate is 3.3 times as high as the total United States rate. Deaths from alcoholism are 6.5 times as high as in the general population.[157/]

The combined tuberculosis rate for Indians and Alaska

155/ Socio-Economic Profile of American Indians in Arizona and New Mexico, U.S. Commission on Civil Rights Staff Report, November 1972, hereafter cited as Staff Report #1, at 33.

156/ *Id.* at 33, 34.

157/ *Id.*

Natives is about 8 times that of the total United States rate.[158] Trachoma, all but extinct in the general population, still affects Indians in Arizona and New Mexico.[159] The infant mortality rate in 1967 among Indian infants living within the area served by the Albuquerque Area Indian Health Service was 37.1 per 1,000, compared to the United States rate of 22.4 per 1,000 in that year.[160]

Dr. Charles McCammon, Director of the Phoenix Area Indian Health Service, in the course of his testimony before the Commission explained the factors involved in the infant mortality rate of Indian children. According to Dr. McCammon, the death rate of Indian infants in the first year of life is almost twice as high as that of the remainder of the Nation. He noted, however, that the death rate of Indian infants during the first month of life was comparable to that of the rest of the country, and during the first week of life was lower than among many other segments of the population. This, he explained, was because most Indian babies are born in a hospital, and a great number of Indian infants die after the child goes home into the "harsh environment" of the Indian family (e.g., inadequate housing and the lack of a proper diet). Dr. McCammon concluded, " It is the harsh environment and the socio-economic conditions of the family that put that newborn at high risk." [161/]

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[158] Id. at 36.

[159] Id.

[160] Id. at 34.

Mental Health Conditions

The physical illnesses of Indians are similar to those of other deprived people, although, statistically speaking, the Indian community suffers to a greater degree than do the others. In the area of mental health, however, the Indian community appears to have unique problems not shared by other minority groups. The Commission's demographic paper explains this phenomenon in terms of cultural conflict:

> As Indians have been caught more and more in the conflict between their traditional cultures and the demands of the larger society, mental health problems have increased.
>
> The conditions underlying the mental health problems of American Indians are related to the stresses brought about by their attempts to adjust to the values of the larger society. The lack of opportunity, the unfulfilled expectations, the purposelessness of their existence, the ambivalence of their identities, and the over-dependency on the government all contribute to these problems. 162/

161/ Phoenix Transcript at 157.

162/ Staff Report #1 at 37.

The Indian community is deeply concerned with mental health problems and has made repeated requests for assistance. Mr. Greymountain said, in the course of his testimony before the Commissioners, that a comprehensive alcoholism program was definitely needed to serve the Phoenix Indian community and the surrounding reservation communities. Mr. Greymountain, in a research paper he submitted to the Commission, noted that the Phoenix Indian Medical Center (the IHS facility in Phoenix) does not offer any service corresponding to a detoxification center; rather, it will only treat alcoholism when a patient is suffering from another disease or injury in addition to alcoholism. Mr. Greymountain was critical of both the IHS and the city of Phoenix for not providing a detoxification treatment center for those Indians repeatedly arrested on alcohol-related charges.[163/]

Dr. McCammon, in the course of his testimony, also discussed the problems of alcoholism and suicide and said that activity in these areas represented "the most active new program in Indian health." He explained that all the tribes in his area have

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[163/] "Urban Indian Project, "a research study of the Phoenix Indian community prepared for the National Indian Training Research Center by Gus Greymountain at 12, 13.

developed alcohol programs that they are managing out of their own funds without IHS assistance, although IHS personnel and funding are used where necessary to supplement the tribal program. He noted, however, that there was a shortage of professional mental health workers within the IHS which had requested additional funds and staff to correct this inadequacy.[164/]

Dr. McCammon said that suicide was a critical problem on some reservations, and attributed this to the cultural conflict which occurs when Indians are caught in transition between one culture and another and feel that "they have lost one world and they don't belong or aren't accepted in the other."[165/]

Dr. McCammon stated that where there are State mental health programs, the State still works with tribal groups and IHS staff. To widen the reach of mental health care, IHS is funding State and local personnel to conduct community mental health clinics on reservations.[166/]

Although it is undoubtedly true that substantial gains have been achieved in approximately 15 years since responsibility for health services was transferred from the Bureau of Indian Affairs to the Indian Health Service, it is abundantly clear that there

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[164/] Phoenix Transcript at 166, 163.

[165/] Id. at 162

[166/] Id. at 163.

is a long way to go. And, while one might be tempted to argue that few people in this country receive excellent health care, the testimony of one witness at the Albuquerque hearing, Ms. Rosemary Williams, an Osage Indian who is an assistant professor at the University of Oklahoma College of Nursing, should serve to set that argument to rest. Professor Williams conceded that no one in the country had excellent health care, but she pointed out that health statistics showed that Indians suffered poorer health conditions than any other ethnic or racial group. She concluded by saying:

> So, yes, non-Indians have bad health care services available to them but, in the light of statistical data, I don't think it's very likely that anybody would like to trade places with us. 167/

It is also important to keep in mind that the health status of American Indians cannot be isolated from their other life experiences. As Jose Rey Toledo, a Pueblo Indian who has spent the last 15 years with the Indian Health Service and recently received his Master's Degree in Public Health from the University of California, said:

> I have often felt that health problems can't be examined in a vacuum. They are related to many things, including un-

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167/ Albuquerque Transcript at 136.

> employment, lack of vocational skills, inadequate education, and cultural conflicts.
>
> Many people are content to say, for example, that alcoholism is a problem without adequate recognition, that this is a mental health problem which is manifested in other ways in forms of suicides, homicides, vandalism, and other deviant behavior as well. 168/

Until American Indians receive equal opportunities in other areas--housing, sanitation, jobs, education, income, etc. -- it is likely that their health status will remain inferior to that of the majority population. This, however, cannot excuse or justify present inadequacies in the health services provided to Indians. Indeed, it should mean that extraordinary efforts must be exercised to provide health care that will minimize the effects of deprivations suffered by Indians in other aspects of their lives.

Finally, it should be noted that the United States Government is quite capable of providing excellent health care when it deems it necessary. Witness the outstanding health care provided in the armed forces; the medical professionals from allied countries marvelled at the American health services in Viet Nam. The Armed Forces take credit, and properly so, for saving the lives of thousands of wounded GI's by prompt and effective treatment.

168/ Id. at 74.

The Indian Health Service

Any investigation and analysis of Indian health must concentrate on the Indian Health Service which has responsibility for the health care of American Indians. With respect to this responsibility, Dr. McCammon explained the objective of the IHS:

> Originally we set our objective to raise the level of the Indian people to that of the people in the surrounding community,...[but] ...we very quickly scrapped that, and we set our objective, our goal, for the Indian Health Service to raise the health of the Indian people to the highest level possible. 169/

It is evident from the statistics quoted in the Commission staff's demographic paper, from the testimony received by the Commission, and from the Commission staff's field investigation reports that the Indian Health Service has not achieved this goal. Dr. McCammon admitted that the Indian community did not receive adequate health services from the IHS. He qualified this, however, by saying that he believed the inadequacy was in respect to the "quantity of service" rather than the "quality of service" provided by the IHS. 170/ He also maintained that sufficient resources were not being provided the IHS for it to provide adequate health care to the Indian community, and pointed to staffing problems within his IHS area. He noted that:

> ...using hospital staffing criteria as presented by the American Hospital Association, overall we were deficient around 35 percent in the staffing of our hospitals.

169/ The Phoenix Transcript at 190.

170/ Id.

To correct this situation, Dr. McCammon said that requests for additional funds had been made.[171]

IHS Staffing

The staffing problems of the IHS, however, are not exclusively confined to numbers; other complaints are voiced by the Indian community. Mr. Antone Gonzales, Chairman of the Colorado River Tribal Council, cited the inexperience of IHS doctors servicing the Indian community, and referred to young doctors assigned to IHS for 2 years periods as "90-day wonders."[172]

The Indian community was also critical of the frequent turnover of IHS medical staff, especially the rotation of doctors and the problems this causes for Indian patients. Marvin Mull, Chairman of the San Carlos Apache Tribe, explained that the Indian community considered some IHS doctors to be very good physicians and as a result good doctor-patient relationships were developed. Consequently, the rotational reassignment of doctors had a disrupting and disturbing impact upon Indian patients. When new doctors arrived to replace those who had left, Indian patients had to repeat the process of developing new relationships. As Mr. Mull explained it, "When the new doctors arrive...it seems like...we have to start all over again, and it really hurts to try it."[173]

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[171] Id. at 159.

[172] Id. at 56

[173] Id. at 130.

The Commission heard several Indian witnesses describe negative experiences they or other families had encountered at Albuquerque Area Indian Health Service facilities. These accounts were substantiated by the testimony of other Indians who, in their professional capacities, had heard similar complaints from patients. Complaints ranged from poor attitudes on the part of health professionals to serious allegations of wrong diagnoses by IHS doctors.

Many complaints related to attitudes. One witness testified that Indian patients often felt that when they described their illness to IHS doctors "many times the doctor would act like he didn't believe them." 174/ Another witness testified:

> Over and over again the people said that, 'They [IHS doctors] act like we are lying to them.' And they said, 'Now, why would we lie about something like that?'175/

This is part of a larger problem, namely, cultural barriers between Indian patients and non-Indian professionals which impede quality health care. To a certain extent, these barriers undoubtedly result from ignorance of Indian culture on the part of non-Indian

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174/ Ms. Janice Kekahbah, R.N., Albuquerque Transcript at 151.

175/ Ms. Rosemary Williams, R.N., Id. p. 152.

professionals. An example of this is the different view doctors and Indian patients may have of what constitutes an emergency. As Mr. Toledo pointed out:

> Indeed, there is no word for "medical emergency" in Indian terminology. And when you're uncomfortable, you're sick. Indians feel when an illness is beyond the body's power of self-healing it is serious and treatment should be sought.
>
> As a consequence of this divergence in attitude, Indian Health Service doctors and staff tend to be upset with Indians who seek treatment for what Indian Health Service people consider minor problems. To the patient, however, the problem is not minor. 176/

These barriers may result not only from mere ignorance of Indian ways and beliefs, but from outright hostility to these beliefs, and from prejudice against Indian people. Thus, Ms. Williams testified:

> I received health care in Indian hospitals. I did an 11-month research study with Indian people. And now I am presently working again with non-Indians. And I'll tell you there is less time spent in talking with or touching Indian patients than there is with non-Indians. 177/

176/ *Id*. at 79-80.

177/ *Id*. at 137.

IHS Funding

The Indian Health Service is substantially underfunded, which has resulted in outmoded and substandard buildings, inadequate staff, and insufficient services. This has led to a series of problems, all adversely affecting the health of the Indian population which the IHS is obliged to serve.

For example, the inadequacy of the physical structure and the lack of ancillary personnel has resulted in the loss of accreditation of the Santa Fe Indian Hospital in New Mexico.[178/] Dr. Richard T. Light, Santa Fe Service Unit Director, said that the hospital was built in 1928. "It has wood floors. It has two big 12-bed wards. Again, it was built for medicine practiced in 1928. It's just not commensurate with practice of 1972."[179/] Dr. Light said, in an interview with a Commission staff member, that funds had been allocated for architects, and plans had been drawn for a new facility adjacent to the hospital. No funds, however, have been allocated by the Congress for the construction of the new facility. Dr. Light acknowledged that there is no real way of knowing whether any such facility would, in fact, be built.[180/]

[178/] Albuquerque Transcript at 179.

[179/] Id.

[180/] Interview Report, Dr. Richard T. Light, November 7, 1972.

Another example of the inadequacy of facilities was discovered in Arizona. Antone Gonzales, Chairman of the Colorado River Tribal Council, testified:

> We have had our hospital condemned by a survey team from Washington. We put in for a new hospital and for some new doctors, and they had a survey team come over and say that the hospital there is inadequate and [doesn't] have the facilities or operating facilities and so forth.... And that was taken back to Washington, and [nothing] has been done about it. And we are still waiting. 181/

It is obvious that funding has been inadequate to provide and maintain adequate health facilities for Indians. It is clear that substantial funds are required to alleviate this situation. It also is obvious that construction of the needed facilities will take time. In the interim, sufficient funds could be allocated to enable the IHS to "contract out" to private doctors and health facilities the care and treatment of more Indian patients.

Currently, the IHS does contract with private doctors and facilities, but funds for this are woefully inadequate. Dr. Kazumi Kasuga, Director of the Albuquerque Area IHS, testified that there are

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181/ Phoenix Transcript at 56.

several types of surgery that because of lack of funds must be deemed "elective," which meant that surgery might be delayed for several months. As examples, he cited tonsils or gall bladder "that might or should be removed," and glaucoma and hernia. He looked forward to a day, he said, when "we hope we will have sufficient funds so that we could take care of these things immediately."[182/]

IHS Services and Practices

A consistent complaint of Indian witnesses, at both hearings, was that they had difficulty getting to a health facility and had to wait a long time before being examined once they arrived at the facility.

Ms. Carol Parvello, a behavioral consultant for the Tucson Indian Center, told of the transportation problems of the South Tucson Indian community. The nearest Indian Health Service Clinic, she said, is located at San Xavier, some eight miles from Tucson. Since few Indians own automobiles the Indian Center provides transportation to the health clinic two days a week (Tuesdays and Fridays) from South Tucson to San Xavier.[183/]

In New Mexico, the Commission heard that Indians had to wait a long time -- much longer than non-Indians -- before being seen by

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[182/] Albuquerque Transcript at 171.

[183/] Phoenix Transcript at 83, 84.

a physician at the Bernalillo County Medical Center which provides health services to Indians under contract with the IHS.[184]

The appointment system is another source of complaints, and reflects the differing values between white and Indian cultures concerning the concept of time. There are practical consequences associated with this problem. For example, most Indian people do not have a telephone or access to one, to call for an appointment. Consequently, they go for medical services without an appointment which further delays the medical attention they require. Thus, communication problems associated with appointments, together with transportation problems, contribute to delays in their receiving health services.[185]

The situation is difficult in cases of routine illness, but in emergency situations it can be critical if not fatal. Mr. Mull testified about inadequate emergency care provided by the IHS and the difficulty of locating doctors after working hours and on holidays. He noted that even Bureau of Indian Affairs officials had complained about these problems:

> And it was said, you know, by one of the Bureau officials..."Why don't you put up a big sign in the public places here, 'Please don't get sick after working hours or on holidays.'" So, you know, it's really true that it's just pretty hard, you know, to get the doctors to work on the emergency cases. [186]

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[184] *Albuquerque Transcript* at 86 and 144.

[185] *Phoenix Transcript* at 67, 70.

[186] *Id.* at 129.

IHS Diagnosis and Treatment

Indians feel, according to witnesses appearing before the Commission, that they often receive only cursory physical examinations by IHS doctors and are treated as if they "were merely cogs in an assembly line."[187/] One witness testified that Indian patients go to IHS field clinics and "are just being rushed through like sheep being put through the sheep dip...Without any real thorough exam as to what the ailment is."[188/]

Dr. Light noted that the number of professionals at the Santa Fe Indian Hospital (SFIH) was "not adequate now, not for the total load" of patients. Asked whether this might "result in staff rushing through examinations on occasion," he replied, "Yes, with the increased load and more patients to see per person, whether it's a doctor or nurse or medic or whatever it is, people get seen faster."[189/]

Serious allegations of mistaken diagnoses of ailments were made to the Commission. Wendell Chino, President of the Mescalero Apache Tribe stated that an IHS doctor at the Mescalero Hospital had given him a "cursory examination" when he went to that hospital on Sunday, October 1, 1972, with a 103-degree temepratureure. Mrs. Chino called the doctor later that night after Mr. Chino's temperature had risen to 104 degrees. The doctor did

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[187/] Albuquerque Transcript, testimony of Jose Rey Toledo, at 77.

[188/] Id. testimony of Amarante Silva, at 86.

[189/] Id. at 178.

not name his illness. It was diagnosed as viral pneumonia the following day by a private physician in Ruidoso, New Mexico.[190]

Another witness described an incident in March 1972 when his mother was given treatment for a "head cold" by IHS physicians at the Santa Fe Indian Hospital. Subsequently, a private physician ascertained that she had a brain tumor.[191]

A third witness testified that he complained of neck pain to a physician at SFIH. "All he did," the witness said, "was just look at me and said nothing was wrong with me. So I just went home."[192] Because his neck continued to bother him, the witness returned to SFIH the next day, and a different physician diagnosed his condition as a pulled tendon requiring a brace and medication. The same witness said that approximately 4 years ago, his sister had gone to the SFIH on 3 successive days complaining of "sideaches," which were diagnosed as "growing pains." On the fourth day, she was taken to St. Vincent's Hospital, a private hospital in Santa Fe, where her condition was diagnosed as a ruptured appendix requiring an immediate operation.[193]

Rosemary Williams cited other examples of mistaken diagnoses in her testimony: one case involved an Indian youth who said that physicians at the Gallup IHS Hospital told him his leg would have to be amputated. A private physician later said that there was no need for an amputation. Another case involved an IHS physician who had diagnosed a bleeding ulcer as "flu." A third example involved a case in which IHS physicians told a woman her complaints about her eyes were "psychosomatic." The woman was subsequently told by a private physician that she had glaucoma and required immediate treatment. 194/

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[190] *Id.* at 118-120.

[191] *Id.* testimony of Jimmy Coriz, Jr., at 113-16.

[192] *Id.* testimony of Mike Perez, at 109.

[193] *Id.* at 110-11.

With respect to these allegations of poor medical practice, the statement by the Commission's General Counsel John H. Powell, Jr., should be kept in mind:

> We do not have sufficient facts to reach a conclusion that this is a pattern. I want to make that clear. These things happen and they certainly influence the perceptions of Indians. Nor can we in any way make judgments about the extent to which the doctors involved did or did not perform adequate medical service. 195/

Indian IHS Advisory Boards

The Indian Health Service has had Indian Advisory Boards designed to obtain Indian input into IHS programs and policies. At present, however, the funding level of IHS only enables it to provide basic medical services. Its funds are insufficient for expanding present services or adding new ones. Indian advisory boards, therefore, cannot have an effective role when no decisions can realistically be made about alternative ways to spend the funds allocated.

194/ Id., testimony of Rosemary Williams, at 148-50.

195/ Id. at 129.

Amerante Silva, a Santa Clara Pueblo Indian and member of the Santa Fe Service Unit Advisory Board, pointed out that allocations are appropriated by Congress and earmarked for certain areas of the health program by Congress and by IHS, and "not by the Indians themselves." Mr. Amerante said, "we would like to have this thing done wherein the Indians can have some say-so as to how these funds can be expended." 196/

Greater Indian control of Indian health programs finds support not only within the Indian community, but also from some IHS officials. In his testimony, Dr. McCammon described a program to give tribes control over their own health programs:

> Now, we have three tribes that currently are awaiting funding for opportunity to set up their own tribal health authority and their own health departments. In this area something in excess of $3 million of funds are managed by tribes in health-related programs, people that are working in health-related programs, that are totally under tribal management, and I think this is the logical step for a tribe to take--first to start managing a community health program and eventually be prepared to say 'We'd like to take over and manage the program.'
>
> This is the objective in the Indian Health Service. There is not a time-table on it. It's the objective to be paced to the desires of the individual tribe. 197/

196/ Id. at 105.

197/ Phoenix Transcript at 182-83.

West Anderson, Vice Chairman of the White Mountain Apache Tribe, concurred with the concept of tribal control of Indian health programs, and favored turning health care programs over to tribal authorities for contract and operation.[198/]

Still another method for increasing Indian control of health services was proposed by Ms. Julia Porter who recommended that the public health system be changed to permit trained Indian personnel to administer Indian health programs. The natural consequence of such a reform, she said, would be increased Indian input and control.[199/]

Urban Indians - Eligibility and Services

Milford M. Sanderson, former president of the American Indian Forum (a local Phoenix Indian organization formed in response to the threatened termination of urban Indian health services by the Phoenix Area Office of the Indian Health Service), addressed himself to problems of urban Indians associated with eligibility for IHS services. He explained that their eligibility for these services depended not on their status as individual Indians, but on their membership "...in a group, tribe, or band for whom Congress has given the responsibility to Indian Health Services for providing health services."[200/] He

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[198/] *Id*. at 154, 155.

[199/] *Id*. at 72.

[200/] *Phoenix Transcript* at 103 et seq.

said that urban Indians saw themselves as members of their respective tribes and, consequently, entitled to health services regardless of where they may live. He said that since urban Indians are members of tribes and consequently eligible for health services, they should receive them. He went on to explain that the threat of termination of urban Indian health services was the result of the re-ordering of priorities by the IHS.[201/] Mr. Sanderson referred to a position paper written by Dr. McCammon which explained that inadequate funding might make it necessary for the IHS to reduce its services to the Indian community.[202/] Accordingly, first priority would then be given to the reservation Indian population with secondary status awarded to urban Indians. Thus, as long as sufficient resources existed, the IHS would serve both reservation and urban Indian populations, but if resources became inadequate urban Indians would be cut off from further health services.

Mr. Sanderson said that in his opinion the tribes should not stand idly by and allow the IHS to terminate services to urban Indians. Rather, he contended, the tribes should recognize their responsibilities to their members off the reservation and assist them wherever they might live. He said:

[201/] *Id.*

[202/] Dr. Charles McCammon, "Availability of Health Services to Phoenix Urban Indians".

> Once you have the tribes recognizing their own people in the cities and taking an advocacy role and saying 'Look, we don't care where our own tribal people live; serve them,' or, you know, use whatever tribal power there is to back these people--otherwise there just might be a chance of the civil rights of that individual being violated. Because the Government is saying, 'You must live in a reservation or near the reservation to receive services.' And the tribe, some of the tribes, may be parroting the same thing and saying 'We can't do anything for our people unless they live on our own reservation or near our reservation,' which again--I mean is it right to deny a person the right to live anywhere he wants to? 203/

Dr. McCammon also addressed himself to the issues raised by urban Indian eligibility for IHS services. The critical factor, he said, involved priorities and not location. He went on to note: "I do not think it is the intent of Congress to exclude urban Indians. I think our interpretation is [that it is] the intent of Congress to provide special services to reservation Indians." 204/

Dr. McCammon drew a distinction between the priority basis and the eligibility basis for distinquishing between reservation and non-reservation Indians. He noted there was no distinction based on eligibility for urban and reservation Indians since both groups are entitled to health services. There was, however, a distinction based on the priority of reservation Indians over non-reservation Indians for IHS services. In Dr. McCammon's words:

203/ Phoenix Transcript at 109-110.

204/ Id. at 164.

> ...there is in the priority basis a distinction made between people who reside on reservation and the people who reside off reservation--not as far as eligibility, if they are a member of one of the tribes, bands, or groups that still have a special Federal relationship. 205/

County and State Responsibilities

A major concern of the urban Indian community is the availability of alternative health services. Indians, as citizens, are entitled to Federal, State, and local health services available to other citizens. Commission staff field investigations, however, indicate that in practice Indians are sometimes denied these services. Since they are Indians, they are automatically referred back to the Indian Health Service for treatment. Thus, Indian people are shunted back and forth between the Indian Health Service and local, State, and other Federal health service facilities and programs. In the course of Mr. Sanderson's testimony, he noted that if county and municipal hospitals which receive Federal funds deny treatment to eligible minorities, serious questions are raised concerning possible violations of Title VI of the 1964 Civil Rights Act. He also noted that the proper authorities in the Department of Health, Education and Welfare should be contacted by Commission staff concerning this problem. 206/

The fact that Indians are eligible for IHS health care should not be used as a reason for denying them their right to health care provided by local, State, and other Federal health facilities. The

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205/ Id. at 165.

206/ Id. at 123.

Indian community itself probably prefers the Indian Health Service to other services available, primarily because they are more familiar with it and, in turn, it is more familiar with Indian problems because of its experience in dealing with Indian people. Nevertheless, the Indian community should have a choice among all the available health services.

ADMINISTRATION OF JUSTICE

In Arizona and New Mexico, Indians suffer from severe handicaps when it comes to the administration of justice. On the one hand, cultural and language barriers make it difficult for the law enforcement officers to understand Indian behavior. Few, if any, Indians work for the criminal justice system -- the police forces, the prosecutors' offices, the bench and the staffs of correctional institutions.

In many ways, the problems of Indians in securing equal justice under law are similar to those of Mexican Americans. (For a detailed discussion of this mat[illegible]ee: "Mexican Americans and the Administration of Justice in the Southwest," a report of the U.S. Commission on Civil Rights, March 1970.)

The Commission heard testimony on the administration of justice only at the Phoenix hearing. Informal discussions with persons interviewed for the Albuquerque hearing indicates that the situation in New Mexico is not dissimilar.

Conditions in Urban Areas

Witnesses from Phoenix and South Tucson spoke of problems in the administration of justice that are common to those two cities as well as other urban areas throughout the State. The overriding concern was alcoholism and its effect on the Indian community. Gus Greymountain testified that the law enforcement agencies of Maricopa County and the city of Phoenix arrest some 7,000 Indians annually on alcohol-related charges.[207/] Statistics of the Phoenix city court reveal that approximately 25 percent of all males arrested for alcohol-related offenses are Indian, and 50 percent of the women arrested for such offenses are Indian.[208/] The tragedy of these figures is underscored by the fact that Indians comprise less than one percent of the city's population and approximately five percent of the State's population.

Wallace Baker, a Phoenix attorney and part-time city magistrate, testified that Indians arrested for public intoxication rarely receive the full protection of a fair and impartial trial. He stated that the prosecution procedure is cursory and that Indians rarely receive effective legal counsel. A public defender system was recently instituted but defendants are not automatically assigned appointments under that system. Instead, they must

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[207/] Phoenix Transcript at 60.

[208/] Id. at 61.

request counsel and Indians are very hesitant to do this. Furthermore, according to Mr. Baker, there are no Indian lawyers in private practice in the city of Phoenix and very few in the entire State. Indian defendants, Mr. Baker said, almost always plead guilty as a matter of course and they are often tried within a few hours after arrest -- sometimes while they are still intoxicated.

Additional testimony emphasized that there are no adequate treatment programs for those sentenced for public intoxication and that the conditions of the jails are usually poor.[209/]

Testifying about similar problems in South Tucson, Michael Wilson, a Papago Indian and a member of the South Tucson Indian Center Board of Directors, stated that Indians in that city are constantly and indiscriminately arrested for public intoxication in situations under which Anglos are far less likely to be arrested. According to Mr. Wilson, many Indians are constant alcoholic repeaters and no effective program exists to take care of this serious health problem.

In addition, he said, Indian prisoners are used as a free labor supply by the city.[210/] For example, many Indians work off their jail snetences by working on garbage trucks whereas this is not true of Anglo or Mexican American prisoners. Mr. Wilson main-

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[209/] Id. at 291-297.

[210/] Id. at 307.

tained that the Indian community believes that Indians in South Tucson are intentionally arrested to provide the city with this free labor supply.

As in Phoenix, Indian defendants in South Tucson normally do not have the benefit of counsel and the Public Defender's Office provides little meaningful assistance. Few Indians, according to Mr. Wilson, are aggressive enough to stand up for their procedural rights or to demand representation by counsel. Most will simply plead guilty in order to avoid a confrontation.

As in other areas of municipal employment, no Indians serve in the city police department. Although police brutality is no longer as common as in the past, Mr. Wilson maintained that there are still occasional occurences of physical mistreatment of prisoners in the jails. Poor jail conditions, including inedible food, is still a common complaint.[211/]

Recently, however, the Indian community in South Tucson prepared a list of demands which included (1) an alcoholic rehabilitation center, (2) cessation of indiscriminate arrests, (3) cessation of the use of Indian prisoners on labor crews and (4) the hiring of

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[211/] Interview by Michael R. Smith, Assistant General Counsel, with Mr. Michael Wilson, Student, University of Arizona and Board Member, American Indian Association, Sept. 12, 1972.

Indian police.[212] At the time of the hearing only the first demand had been met. This resulted in part from the fact that the State of Arizona recently revised its criminal code to delete public intoxication as a criminal offense. Tucson is one of the first areas in the State to establish such a center.

Police Brutality

Relatively little testimony was given at the Phoenix hearing and during Commission staff field investigations about specific acts of physical abuse by police officials. No recent instance of such abuse in the Phoenix metropolitan area was mentioned. Some witnesses indicated that problems still exist in bordertowns adjacent to the reservations (e.g., Flagstaff and Winslow) but specific examples were rare. The Reverend John Fife, Pastor of the Southside Presbyterian Church in South Tucson, however, did state in his testimony that during the past few years several members of his congregation had died from beatings received in jail.[213]

There were two other major exceptions -- one incident involved the treatment of Indian demonstrators led by the American Indian Movement (AIM) protesting Indian dances at the Flagstaff Pow Wow in

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[212] Ibid.

[213] Phoenix Transcript at 317-319.

July 1972. In this incident, AIM leaders arrested at the Pow Wow for attempting to disrupt the Indian dances were reportedly subjected to excessive bail ($25,000 apiece), racial slurs, and police brutality. Oral testimony concerning this incident was not entered into the record but was anticipated from AIM leaders who were present to participate in the hearing Saturday evening. [214/] (Note: the late afternoon and evening sessions of the hearing were cancelled after one of the Commissioners was stricken with a sudden illness. Witnesses who had not been heard were requested to submit their testimony in writing to the Commission.)

The second incident which had received national attention and caused anxiety and anger in the Arizona Indian community involved the shooting of Philip Celaya, a Papago Indian youth, on July 1, 1972, by a county sheriff in Ajo, a town bordering the Papago Reservation. Field investigators were told that Celaya and his family had been drinking and that the victim had passed out and was asleep in the back of a pickup truck driven by a relative. County deputy sheriffs pulled the truck over for a traffic violation (a tail light not functioning properly), and an altercation occurred between Philip Celaya and the deputies. Celaya was shot twice -- fatally. Accord-

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[214/] Interview by Joseph C. Muskrat, Director, Mountain States Regional Office, with Vernon Bellecourt, Robert Burnette, Jeremiah Easchief and Whitney Gray, members of the Denver chapter of American Indian Movement, September 13, 1972.

ing to the deputies, this occurred after a struggle during which Celeya had taken one of the deputy's guns and shot at them. Family members who witnessed the event stated that the youth had never taken the officer's gun. Much of the community concern involved the allegedly inadequate investigation carried out by public officials.

According to Michael Wilson, on the morning following the shooting (a Sunday) a coroner's jury meeting secretly concluded that the shooting was justifiable. Members of the Indian community (including Wison) demanded a grand jury investigation. The investigation was held before a Superior Court judge. According to Mr. Wilson, the chief criminal attorney in charge of the proceedings was an employee of the sheriff's office. Furthermore, it was alleged by the Indian people present at the investigation that the questioning was totally sympathetic to the officers whose testimony was accepted and no attempt was made to challenge their version of the incident.

On the other hand members of the Celaya family, whose testimony contradicted that of the officers, were severely cross-examined in an attempt to discredit their testimony. According to Mr. Wilson, a lawyer representing the family was not allowed to question his own witnesses or to cross-examine the officers. Testimony at the grand jury proceedings indicated that a paraffin mold had been taken which would prove or disprove whether Celeya had, in fact, fired a hand gun. In response to a request for the findings of that test, the county officials responded that, although a mold had been taken, it had not been sent to Washington for analysis because the process was "too expensive." The Indian community believes that had an Indian shot a deputy sheriff the cost of this test would not have been considered a barrier to proving the Indian's guilt. The grand jury in the Celaya case concluded that the homicide was justifiable.[215]

The incident caused considerable alarm within the Indian community, both locally and nationally, as an instance of "bordertown justice." Mr. Wilson said that the shooting was not a unique incident in the area but that similar occurrences had taken place during the past year, including the shooting of a black girl and a Chicano youth by police officers. These two cases, according to the witness, received equally shoddy investigation.[216] (During the field investigation in preparation for the hearing, Commission staff was asked by community representatives to enter the investigation and, subsequently, the Office of General Counsel referred the matter to the Department of Justice, expressing the Commission's concern. The case was subsequently investigated and closed by the Civil Rights Division of the Justice

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215/ Phoenix transcript at 301-307.

216/ Interview by Michael R. Smith, Assistant General Counsel, with Michael Wilson, September 12, 1972.

Department as "lacking prosecutorial merit.")[217]

During the Commission staff's own field investigation, several witnesses expressed the view that the Celaya shooting was merely part of the "systematic oppression" of the Indian people in southern Arizona. There also was some indication that the shooting was thought to be part of controversy involving the Celaya family and another prominent Indian family who were resisting the encroachments of the Anglo community on ancestral land. These Indian families allegedly had been victims of police harassment and other kinds of pressures, including the actual destruction of their homes, to persuade them to sell their land.[218]

Complaints from Reservation and Boardertown Areas

Besides being accountable to Federal and State legal jurisdictions, Indians living on reservations also are subject to the criminal jurisdiction of their own tribal governments. In Arizona, tribal justice includes tribal courts, tribal judges, and tribal police, often as advanced and well equipped as the law enforcement systems of comparable rural areas. Some tribal law and order systems are run exclusively by the tribe (e.g., Gila River Reservation) while others are operated and administered by the Bureau of Indian Affairs (e.g., the San Carlos Apache Reservation).

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[217] Interview by Stella Caballero, Staff Attorney, U.S. Commission on Civil Rights, with Mr. Carlton Stoiber, Staff Attorney, Department of Justice, Civil Rights Division, February 16, 1973.

[218] Interview by Michael R. Smith with Michael Wilson, September 12, 1972.

Some complaints heard from reservation residents are unique to Indians and arise directly from tribal law enforcement. Other complaints relate to State and local police action and are similar to those heard from Indian residents of urban areas. As an example of the latter, West Anderson, Vice Chairman of the White Mountain Reservation, stated that in bordertowns near reservations Apaches are arrested more frequently than non-Indians for alcohol-related offenses and receive higher penalties then non-Indians for the same offenses. In these towns, he said, police selectivly arrest Indians prior to major public activities, like the Fourth of July rodeo, and use Indian prisoners as public laborers (e.g., to repair the rodeo facilities).[219/] Lack of adequate legal representation and cultural barriers to criminal procedural protection are also problems commonly voiced by reservation Indians.

A major concern of tribal law enforcement officials was the lack of cooperation they received from State and local law enforcement agencies. Wesley Bonito, White Mountain Apache Tribal Council member, discussed the problems of law enforcement in McNary, a town located on the reservation and divided between two counties, Apache County and Navajo County.[220/] The majority of Indians live in Navajo County while the whites live in Apache County. A full-time deputy sheriff patrols the business district of McNary, but does not protect the Indian part of of town in Navajo County. The burden of enforcing the law in that

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[219/] Interview by Raymond Cross, Staff Consultant, U.S. Commission on Civil Rights, with West Anderson, Vice Chairman of the White Mountain Apache Tribe, September 12, 1972.

[220/] Interview by Raymond Cross with Mr. Wesley Bonito, White Mountain Apache Tribal Council member, September 17, 1972.

section of town falls on the understaffed tribal police department (the tribal police force of nine men must patrol a reservation of 1.6 million acres). The result, according to Mr. Bonito, is that equal protection of the law is denied to Indian residents of the town of McNary.[221/]

Another witness, William Rhodes, Chief Judge of the Gila River Reservation, described a similar lack of cooperation from county law enforcement officials.[222/] The Gila River Reservation overlaps two separate counties, Pima and Maricopa. A common practice in reservation areas involves the cross-deputization of tribal police and county sheriffs to increase cooperation between the two systems. An Indian committing a crime on a reservation, under this system, could be apprehended off the reservation by the sheriff's department and turned over to tribal police. On the other hand, an individual violating a State law could be apprehended by tribal police on the reservation and bound over to the county sheriff's department. The Pima County sheriff has traditionally cooperated with the Gila River tribal police in this cross-deputization process, but the Maricopa County sheriff has refused such cooperation and has been unwilling to cross-deputize the tribal police.[223/]

The lack of cooperation was partly responsible for a recent innovative decision on the part of the Gila River Tribe (and the Salt River Tribe as well) to assert criminal jurisdiction over non-Indians. Traditionally, tribal governments have only exercised

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[221/] Id.

[222/] Phoenix Transcript at 338.

[223/] Interview by Michael R. Smith, with Judge William Rhodes, Gila River Tribal Judge, August 15, 1972.

jurisdiction over Indians on the reservation. Some Indian law experts have taken the position that an act of Congress would be needed to grant tribes jurisdiction over non-Indians. Others have claimed that any tribe could exercise such jurisdiction if it so desired. Judge Rhodes stated that his tribe has exercised jurisdiction over whites for approximately a year and a half. He explained that his original incentive for doing so resulted from a case in which a local State court judge dismissed a State prosecution against a non-Indian because, according to the Judge, the tribal police officer who arrested him did not have jurisdiction off the reservation. Because of this decision, according to Judge Rhodes, local non-Indians assumed that they were immune from arrest for crimes committed on the reservation and began to commit crimes within reservation boundaries. This included such violations as racing cars on tribal roads and taking sand from tribal land without permission. The tribe could get no help from county law enforcement officers to enforce the law on the reservation, according to Judge Rhodes. The county would not enforce jurisdiction over non-Indians on tribal land. This was even true for more important crimes such as physical assult. To remedy this double standard of justice, Judge Rhodes decided to exert criminal jurisdiction over non-Indians on the reservation to the same degree that it is exerted over Indians.[224] Subsequently, when it appeared that things were going smoothly, the tribe decided to pass a formal ordinance assuming jurisdiction over non-tribal members.[225]

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[224] Id.

[225] Phoenix Transcript at 338.

As with all tribal legislation, this ordinance was submitted to the Solicitor's Office of the Department of Interior for approval. Although that office normally provides legal assistance to tribes in taking important steps such as this, in this particular instance it would take no position. The Solicitor's response was noncommital and left the validity of the resolution unsettled. [226/]

Major Crimes Enforcement and BIA Law Enforcement

Federal law limits the criminal jurisdiction of tribal courts to crimes which are punishable by no more than 6 months in prison and a $500 fine. All felony jurisdiction for crimes committed on reservations, either by Indians or non-Indians, is the responsibility of the Federal Government (under The Ten Major Crimes Act). This responsibility is exercised on reservations through the BIA special officer assigned to the reservation and local FBI agents. Judge Rhodes and other tribal officials have complained about the exercise of this function. The FBI and the BIA have not taken seriously their responsibility to investigate such crimes as murder, aggravated assault, and rape. According to Judge Rhodes, both Indians and non-Indians who commit such crimes on reservations are much more likely to be released on parole or probation than if the crime were committed elsewhere. In addition, according to Judge Rhodes, some Federal judges feel that criminals on the reservation should be

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[226/] Interview by Michael R. Smith with Judge William Rhodes, August 15, 1972.

ignored. Furthermore, it was alleged that in many cases defendants are not even brought to court because of the lack of effective investigation by the responsible Federal agencies.[227]

John Artichoker, Phoenix BIA Area Director, also expressed concern about the lack of effective law enforcement for major crimes on reservations. He stated that BIA officers no longer play as direct a role in enforcement efforts as they have in the past. Instead of taking an active part in the investigation the only current responsibility of BIA officers is to "preserve the scene of the crime" until the FBI arrives. This may be a matter of days, he said, and therefore the BIA's role is relatively useless.[228]

Complaints were also heard about the quality of the administration of justice provided by the Bureau of Indian Affairs on reservations. Marvin Mull, Chairman of the San Carlos Apache Tribe, testified that the BIA law enforcement officers do not work closely with the tribe. Their response to emergency situations, he said, is ineffective and they do not provide adequate protection to tribal members. Mull stated that the tribe could do a more effective job of law enforcement if it were to take over that function.[229]

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[227] Id.

[228] Interview by Michael R. Smith with John Artichoker, Phoenix BIA Area Director, September 17, 1972.

[229] Interview by Michael R. Smith, with Marvin Mull, Chairman, San Carlos Apache Tribe, September 15, 1972.

Correctional Facilities

An overriding complaint in the area of administration of justice from both reservation and urban Indians is the handling of alcohol related offenders and the lack of adequate facilities (on the part of the State, the Indian Health Service, and the tribes) to treat rather than punish such persons.

Mr. Philip Tsosie and Dr. David Giles, Director and Assistant Director respectively of the Southwest Indian Youth Center (SWIYC), testified about correctional facilities for Indian youth. The Southwest Indian Youth Center, they explained, is a federally funded detention center for male reservation youths which receives referrals from tribal, State, and Federal courts in the six-State area of Arizona, California, Colorado, Nevada, New Mexico, and Utah. It operates through the auspices of seven halfway houses located in the Tucson area. Since there are no such facilities for reservation youths administered by the State, Federal or tribal governments, the SWIYC is the only facility of its kind. Nevertheless, it can take only 71 youths and does not serve female offenders. Because of the absence of such facilities, juveniles prosecuted by the tribe are normally kept in the same cells as adult criminal offenders.[230/]

230/ Phoenix Transcript at 323.

The main concern of the representatives of SWIYC was the failure of both the State and Federal governments to sponsor programs for reservation Indians. Currently, the center relies on Federal funding. Because 85 percent of its budget comes from the Bureau of Indian Affairs, the center is bound by the Bureau's policy of restricting its services to reservation residents. Thus many urban Indian youths in need of such a program have no access to it. The program receives no general financial support from the State except in those cases where a specific county may refer an individual and reimburse the center on a per capita basis for his support.[231/]

According to Dr. Giles, the State generally has taken the position that tribes are sovereign entities and wards of the Federal government. Thus the State has no direct responsibility to support reservation-oriented programs with State tax dollars. However, when Indian programs turn to the Federal Government for funding, according to Dr. Giles, they are met with the Administration's emphasis on regionalization and local control and told to look to the State as a funding source. This often means that the State governor, or officials appointed by him, decide where Federal funding should go, and in this regard Indians receive a low priority. Indian groups

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[231/] *Id.* at 324-325.

and Indian programs have little voice or input into State or local plans. Programs such as SWIYC are frustrated by this dual evasion of responsibility. Dr. Giles said, "When we go to LEAA (Law Enforcement Assistance Administration, U.S. Department of Justice) for assistance, we are told to go to our State plans for funds. But when we go to the State we are told that Indians are a Federal responsibility."[232/]

This assertion was denied by Albert N. Brown, Executive Director of the Arizona State Justice Planning Agency (ASJPA), the State agency for the distribution of LEAA funds. He said that under LEAA, Indian reservations are considered as units of general local government and receive the same treatment by ASJPA as any other unit of general local government. Brown noted that his office employs an Indian Planning Specialist. From LEAA's block grant to the State of Arizona, Indian tribes are entitled to a share based on population. Furthermore, according to Mr. Brown, Indian tribes receive an additional share of the 15 percent discretionary funds set aside annually by LEAA. Currently, tribes are receiving $3,000,000 in discretionary grants nationally. Information submitted by the ASJPA indicates that during the period from November 15, 1968, until September 1, 1971, Indian tribes

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[232/] Interview by Thomas V. Pilla, Field Representative, U.S. Commission on Civil Rights, with Dr. David Giles, Director Southwest Indian Youth Center, August 30, 1972.

receives 16 grants totaling $420,969 of $7,850,769 in grants received in Arizona. All but $12,725 of the grants to tribes, however, was discretionary funding. In response to inquiries about Indian input into his agency's decisions and operation, Mr. Brown stated that ASJPA's full-time Indian Justice Planner assists tribes in determining priorities and preparing plans. This flows through the task forces of the Governing Board which also has Indian representation.[233/]

Mr. Tsosie and Dr. Giles also complained of areas where cooperation is lacking from State and local authorities. They said, for example, that when SWIYC has internal discipline problems (such as a crime committed by an inmate against a staff member or another inmate), the facility would like to be able to refer the offender to the Pima County Juvenile Detention Center. The county, however, has refused to provide such assistance on the grounds that Indian inmates are reservation residents and that the county, therefore, has no responsibility for them.[234/] This reasoning, of course, is faulty because the present concern is not for offenses committed on the

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233/ Statement submitted for the record by Albert N. Brown, Executive Director of the Arizona State Justice Planning Agency (ASJPA).

234/ Interview by Thomas V. Pilla, with Mr. Philip Tsosie, Director Southwest Indian Youth Center (SWIYC) and with Dr. David Giles, Assistant Director, SWIYC, August 30, 1972.

reservation but offenses committed at the Southwest Indian Youth Center which is located off the reservation, in Pima County.

Albert French, Sr., a Maricopa Indian from Gila River who recently served a three and one-half year sentence at Arizona State Prison and is currently the prisoner-parole coordinator for the Indian Development District of Arizona, explained the unique problems faced by Indian prisoners in State prisons.[235/] According to Mr. French, some of these problems include lack of counseling to assist Indians in overcoming cultural barriers, nonparticipation of Indians in vocational training programs, harassment of Indian prisoners by prison staff and neglect of Indian prisoners by prison authorities because of their powerlessness as a minority group. According to Mr. French, lack of personal safety within the prison is a major problem for Indians as well as other prisoners. Most prisoners, he explained, carry knives to defend themselves. Gangs of prisoners run the prison as well as their fellow inmates. Indian prisoners, however, generally stick to themselves and do not take part in these gangs. This, in turn, has mixed consequences--without a gang, Indians avoid some conflict yet lack the protection such an organization provides.[236/]

235/ Phoenix Transcript at 329.

236/ Interview by Jerry Muskrat, with Albert N. French, Sr., Prisoner-Parole Coordinator, Indian Development District of Arizona, October 30, 1972.

With respect to vocational training, Mr. French explained that Indians are the last chosen to participate. Since competition for a vocational slot is high, other inmates who are more aggressive and assertive are selected over Indian inmates. The existence of other more aggressive minority groups (i.e., Blacks and Chicanos) contribute to Indian problems in other ways, according to French. Since these other groups are numerically larger and more assertive, the prison administration caters to their desires. Indians, who are politically powerless, are ignored. The problems are further complicated by the fact that the prison administration is not sensitive to Indian cultural characteristics. Prison personnel are often incompetent and poorly trained and sometimes reflect racial prejudice towards Indians. It is common, for example, for prison guards to refer to all Indian inmates as "chief,"[237/] which is regarded by Indians as a racial and cultural slur.

[237/] Id.

WATER RIGHTS

Water is perhaps the West's most precious commodity and water rights are of inordinate importance in that region, particulary to Indians. Only if their water rights are respected and protected by the Federal Government can the Indians maintain their tribal lifestyle. The game they hunt, the herds they graze, and the crops they raise on their reservations are all dependent on water. Take away or seriously lessen the Indian's access to abundant water and you have taken away his ability to remain Indian; hence the Indian's insistence of protecting his water rights.

Lest anyone doubt the importance with which Indians regard the preservation and protection of their water rights, the following portion of testimony by Samson Miller, Vice President of the Mescalero Apache Tribe, should be instructive:

> Earlier in the history of this continent before the reservation system was established, before our white brothers appeared on this land, the Indian was able to use the water without competition or interference. Great care was always taken to conserve this precious resource.
>
> As this country grew, greater demands on the water supply were made. Still, at the time the reservations were being created, it appeared that there was enough water for all. With proper planning this may still be true.

Early in the century the United States Supreme Court recognized the reservation Indians had retained their right to use water found on the reservation. The Winters [Winters v. U.S., 207 U.S. 564 (1908)] doctrine established that the right to use the water was not given up when various tribes ceded some of their homelands to the United States.

This doctrine and cases which have followed it also made clear that the future needs of the Indians were to be accommodated.

The Winters doctrine also insures the tribes that these rights to water may not be taken away by any State.

It must never be forgotten under that reservation system the land and other natural resources of the Indians were not gifts from the United States. The land and water originally belonged fully to the Indians. The United States was the one receiving the grant. Neither the United States nor any State ever owned the water resources which now are found on the reservations.

Over the years a great development has taken place in the area now called New Mexico. Demands for water increased. Because of the increased competition for use in this limited resource, we are now in fear that our rights which were established long ago may become eroded like the banks of a swift-running stream.

There is every indication that this growth will continue. There will be more people, more cities, more industry. With this growth will come even greater demand for water. More and more people will be asking for what they consider to be their share.

> We fear that the water resources will be spread too thin, that the promise of the Winters doctrine will become an empty shell.
>
> Thought must be given now to potential conflict that may arise in the future. The needs of all persons must be considered.
>
> New Mexico is a part of the homelands of the Mescalero people. These homelands are the very foundation of all tribal life and growth. The Mescaleros are fortunate in having a land rich in natural and human resources. The potential exists for great development. But these resources are without meaning if there is no water.238/

While Mr. Miller spoke with feeling and eloquence of the importance of water to Indians, he also spoke of the right of Indians to govern themselves and control their own affairs. He added, "this concept includes the rights to control the use of land, water, and other natural resources belonging to the tribe."

Commissioner Mitchell voiced agreement:

> Essentially, the problem of water for the Indians is the only way they can remain Indian. If they have to leave those territories, if there is no more water for them, then they must become urban Indians or disappear from the reservations. 239/

Thus, the extent to which Indians have been and are able to retain their water rights in the face of rapid non-Indian population growth in the West, determines their capacity to survive as a community of people.

238/ Albuquerque Transcript, at 696-700.

239/ Id. at 672.

Unfortunately, it appears that the United States Government, which has the obligation to preserve and protect Indian property rights including water rights, has been grossly derelict in its duties and, as a consequence, Indian water rights are gravely threatened.

As described in The Right to Remain Indian, a report of the All Indian Pueblo Council, it is well established that "Indian tribes residing on reservations have paramount rights to sufficient water with which to meet their present and future economic development requirements."[240/] Moreover, these rights are "not subject to State laws and are paramount to water users who claim their rights under State laws."[241/] As noted by Ray Simpson, attorney for several Indian tribes and a recognized expert in the field of Indian water rights, "Indians have...by implication if not by express language, the right to use as much water as is necessary to properly use the land."[242/]

240/ The Right to Remain Indian, a paper submitted to the U.S. Commission on Civil Rights by The All Indian Pueblo Council, Inc., November 8, 1972, p. 18 (hereafter cited as Paper). This doctrine is known as the Winters doctrine, based upon the Supreme Court's decision in Winters v. U.S., 207 U.S. 564 (1908). For a full discussion of the doctrine and subsequent cases amplifying it, see generally the paper, pp. 1-18.

241/ Id.

242/ Albuquerque Transcript at 555.

It is also clear that the United States bears the relationship to Indians of guardian to ward; in short, a trust relationship with all the obligations incumbent upon the trustee, including (but, of course, not limited to) preservation and protection of Indian water rights.[243/]

For a trustee faithfully to execute its duties to preserve and protect property, it is obvious that the trustee must do at least two things: (1) clearly identify and inventory the property which is the subject of the trust and (2) vigorously defend that property against any encroachment which will diminish the value or extent of the property. Testimony at the Albuquerque hearing by both Indians and representatives of their trustee, the United States Government, amply demonstrated that the trustee has not faithfully done either. Indeed, not only has the trustee failed in its trusteeship, but it is also caught in a conflict of interest which, until the present, has often precluded it from vigorously doing what must be done.

With respect to the necessity for making an invetory of Indian water needs, a number of witnesses at the hearing indicated the government's failure. For example, Mr. Simpson, while noting that water needs have been described in some recent Executive Orders,

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[243/] See, generally Paper, pp. 1-8.

charged that "in most instances this has not been spelled out...and...the failure to spell this out in so many instances has led to trouble."[244/]

Domingo Montoya, a Sandia Pueblo Indian who is a member of the Six Middle Rio Grande Pueblo Irrigation Committee, in 1965 forwarded a resolution of the All Indian Pueblo Council (he was then its Chairman) to the Secretary of the Interior and Commissioner of Indian Affairs requesting them to do "everything possible to make available competent legal and engineering assistance to assist on a full-scale basis to collect, concentrate, and analyze all available information in regard to New Mexico Pueblo water rights."[245/] Mr. Montoya said they didn't reply to the resolutions until 1970--five years later--when Commissioner Bruce came out to New Mexico and apparently agreed to undertake the task.

As noted in The Right to Remain Indian, "in spite of assurance from the Bureau of Indian Affairs, a serious comprehensive study and determination of the land and water needs of the Pueblo Tribes has not been made."[246/] Walter Olson, Director of the Albuquerque Area BIA, attributed the failure of the government to make such an inventory

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[244/] Albuquerque Transcript at 555.

[245/] Id. at 580-81.

[246/] Paper, p. 60.

to lack of "consciousness" until relatively recently of "how valuable water was."[247] The government, he said, was involved to some extent in making such an inventory in connection with pending litigation. Whether these actions will be adequate, however, is doubtful as the following exchange between General Counsel John Powell and Mr. Olson indicates:

> MR. POWELL: Would you say...the litigation now underway, when consummated---I understand it's going to be a series of cases...that the rights of Indians will be adequately protected?
>
> MR. OLSON: No, I didn't say that, and I didn't mean to infer it. [248]

The government's failure to respond to Indian requests for an inventory is not confined to the Pueblo Indians. Mr. Hubert Velarde, President of the Jicarilla Apache Tribe, testified that his tribe's attorney had written to the BIA in 1958 requesting an inventory. (Mr. Velarde noted that there may have been such a request as early as 1952.) Mr. Velarde told the Commission that the tribe had never received an answer to the 1958 letter.[249] The tribe recently obtained private funds for such a study and it has been made without governmental involvement.

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[247] Albuquerque Transcript at 659.

[248] Id. at 630.

[249] Id. at 594.

Witnesses representing Arizona tribes told the Commission that the Federal Government had not been very helpful in developing their natural resources either. The Colorado River Reservation Irrigation Project, for example, was started 105 years ago and is only 50 percent complete. The snail-like pace of this project moved Anton Gonzales, Chairman of the Colorado River Indian Tribes, to say to the Commission:

> I can't see right now where a small project like ours is going on for a hundred years and yet the Central Arizona Project is going to be finished in 10 or 15 years.[250]

Allegations were made that a 1935 decree respecting water rights for the Gila and Salt River Indian communities did not adequately protect Indian interests.[215] Lafollette Butler, Assistant to the Area Director, Phoenix Area BIA, responded that "we are looking at" the decree "to see what we can do."[252]

It was only recently that the BIA provided funds ($50,000) to the confederation of Colorado River Tribes[253] to do a study which would include an inventory of water. Likewise, the government only recently funded several central Arizona tribes to do a study of their water needs in order to make their case for water allocations from the Central Arizona Projects.

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[250] *Id.* at 615.

[251] See testimony of Paul Smith, *Id.* at 622-24; Royal Marks, at 624-26.

[252] *Id.* at 653.

[253] These include the Fort Mojave, Colorado River, Chemehuevi, Quechan and Cocopah Tribes.

It may be seen then, that the trustee, the United States Government, has been less than vigorous in doing what any trustee should do--make a thorough inventory of the subject of the trust, in this case Indian water needs and rights. Obviously, without such an inventory it is virtually impossible to preserve and protect Indian water rights.

Perhaps the reason for the government's failure is due to its being caught in a conflict of interest, representing as it does conflicting constituencies. This is particularly true of the Department of the Interior, under whose umbrella lie the Bureau of Indian Affairs and such agencies as the Bureau of Reclamation and the Bureau of Land Management. The Department can find its subsidary components taking conflicting positions. For example, the BIA ascertains Indian water rights, but another section of Interior is charged with the building of dams and reclamation projects. The Department of Justice, which is responsible for representing government agencies in litigation, is subject to the same conflicting pressures.

This conflict of interest was recognized by President Nixon in his 1970 message on the American Indian. He advocated the establishment of a separate Indian Trust Council Authority which would be solely responsible for providing legal assistance to Indians in protecting their rights. As President Nixon put it: "No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute."[254/] Unfortunately, Congress has yet to act on the subject.

The conflict within the Departments of Interior and Justice are clear and seemingly capable of correction by the establishment of an agency charged specifically and solely with the preservation and protection of Indian rights.

Both Indian spokesmen and government officials noted the conflict of interest situation during the Albuquerque hearing. Mr. Montoya said he believed that the reason the All Indian Pueblo Council received no reply to its 1965 Resolution until 1970 was that there was just such a conflict among Justice Department attorneys. "The Justice Department," he said, "would not allow certain lawyers...to come out there and do the work or help the Indian get ready for a suit."[255/]

Veronica Murdock, another witness representing the Colorado River Tribes, described the adverse effect of Bureau of Reclamation Projects on the ability of the Fort Mojave Tribe to develop their land.[256/] She alleged that the Bureau of Reclamation, which had

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[254/] President's Message to American Indians, July 8, 1970 Docket 91-363.

[255/] *Albuquerque Transcript* at 581.

[256/] See testimony of Veronica Murdock, *Id*. at 607.

originally made a commitment to her tribe for a block of electric power when the Parker Davis Dam Project was built, has since "been reneging on it." The tribe has attempted to get help from the BIA she said, but the BIA is "not moving on it." [257/]

Paul Smith, President of the Salt River Pima-Maricopa Indian Community Council, described a situation in which the government admitted that a conflict of interest prevented it from filing suit against non-Indians who had "encroached on reservation lands." [258/] A river which ran along a reservation boundary had run dry and non-Indians settled on the land. It took 20 years, Mr. Smith said, for the Indians, "fighting constantly," to persuade the Bureau of Land Management to survey the boundary. By that time, the encroachments were established. The Indians, their attorney, and staff from the Department of Interior Solicitor's Office in Phoenix then asked the Department of Interior to file suits against the trespassers through the Interior's Solicitor's Office in Washington. The Indians and their representatives also went to the Justice Department which in turn told the Interior Department that if Interior formally requested Justice to bring suit, it would be done.

About a week after the Indians returned to Arizona from their trip to Washington, they received a telegram from Interior's Assistant Secretary, Harrison Loesch, informing them that

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[257/] Id. at 615-16.

[258/] Testimony of Paul Smith, President, Salt River Pima-Maricopa Indian Community Council, Id. at 633.

the Department would not recommend suit. A portion of that incredible telegram was read into the record by the witness, Mr. Smith:

> By virtue of the Secretarial determination of the boundary, I cannot in good faith request the Department of Justice to seek damages from such persons. I best [sic] agree that as far as the question of seeking damages from third parties ultimately resulting from a mistake in factual assumption that existed in this Department for decades is concerned, the situation appears to present a classic example of the conflict of interest which this Department has often faced and can only note that the Indian Trust Council Authority legislation which has been so strongly supported by this Administration resolved some of these basic conflicts of interest in which this Department so often finds itself. 259/

Both the Albuquerque Field Solicitor 260/ and the Phoenix Field Solicitor 261/ for the Department of the Interior agreed that, in view of the conflict of interest situation, the Indian Trust Council Authority bill should be passed.

Pending the enactment of the Trust Council Authority, 262/ an Office of Indian Water Rights was established in January 1972 "as an interim measure to take care of all the water rights problems and to avoid to the extent possible the conflicting interests in the Department." There is some question, however, about the ability of this recently created office to do an adequate job.

259/ Id. at 634-35.

260/ Testimony of Lotario D. Ortega, Id. at 644.

261/ Testimony of William G. Lavell, Id. at 645.

262/ Testimony of Hans Walker, Jr., Id. at 646-47.

The Office reports through the Commissioner of Indian Affairs to the Secretary of the Interior . It does not report to an Assistant Secretary. The problem, of course, is that even though the Office does not report through an Assistant Secretary it is still within the Department of Interior. Hence, while the potential for conflict may be somewhat lessened it is by no means obviated. Moreover, the funding for the Office is, in the words of its Director Hans Walker, Jr., "not adequate to meet the needs...."[263/]

Lafollette Butler, Assistant to the Phoenix Area BIA Director, testified eloquently to the need for changing the present system to better protect Indian rights. He said that more was needed than additional funds, including "[l]egislation...to resolve the conflict of interest matter if Indian water rights and Indian resources are to be adequately protected."[264/] Mr. Butler also asserted the need for "clarification of the Bureau's role in administrative or judical proceedings where the United States is the opposing party. We could cite you example after example of where we are either told not to help the tribe or to pull off after a certain amount of work has been done."[265/]

[263/] Id. at 648.

[264/] Id. at 667.

[265/] Id.

Mr. Butler made one of the more innovative suggestions presented to the Commissioners at the Albuquerque hearing: creation of a program similar to the Environmental Protection Act which would assess the impact on Indian water rights of Federal expenditures. Because of its special interest, Mr. Butler's testimony follows:

> The United States found itself with its various agencies going off and doing their own thing, and the thing that they were doing was adversely affecting the environment. And so they got a clearinghouse. By passing the Environmental Protection Act, they provided for a clearinghouse so that at least whether the project proceeds or not,...the United States knows what the impact on the environment is going to be and can make the decision of whether to proceed or not with that knowledge.
>
> It seems to me that we could have an Indian water rights impact program so that when Federal monies are to be used for any purpose, any kind of development, that we would not proceed until we had an Indian water rights impact statement, and that such a statement would provide the clearinghouse...and would give us the leverage that the tribes and the Indian Bureau as trustee needs to assure that development that adversely affects Indian water rights would not proceed or, if it did proceed, it would be with full knowledge of what that adverse impact would be. 266/

266/ *Id*. at 668-69.

CONCLUSIONS

This report reveals a grim picture of living conditions for American Indians in New Mexico and Arizona. Few hopeful signs or positive actions are portrayed. The Commission does believe, however, that sincere efforts within the public and private sectors can result in progress. The final section of this report delineates specific recommendations for action. Enactment of these recommendations would go far toward alleviating the conditions summarized in this section.

Employment

The employment problems of Indians in both States are deplorable. Neither the Federal nor State Governments have mounted an effective leadership role in this area. Except in agencies created to be responsive to Indian needs and which have specific statutory obligation to hire Indians, Federal employers have not hired Indians in any appreciable numbers.

Even in the Federal Indian Health Service Indians all too often are locked into the lower levels of Federal employment. They find promotion and upgrading opportunities closed to them and encounter significant hostility from non-Indian supervisors when they make complaints. The failure of the Bureau of Indian Affairs, rectified only recently, to apply the Indian Preference Clause to promotions and upgrading has compounded the employment situation.

The fact that a significant number of Indians are employed by the BIA and the IHS does not excuse the poor employment record of all other Federal agencies in Arizona and New Mexico. In New Mexico, for instance, the agency responsible for implementing equal employment opportunity requirements in the Federal service, the U.S. Civil Service Commission, employed no Indians.

State and municipal agencies are similarly deficient in their employment of Indians. Although geographic isolation was often given as a reason for this failure State agencies located on or near Indian lands in both States were equally derelict. The Arizona Highway Department, for example, employed insubstantial numbers of Indians on its highway construction and maintenance projects even when they are located on Indian reservations.

Private companies, for the most part, had equally dismal employment records. A few companies, both Indian owned and non-Indian owned, employ substantial numbers of Indians at all levels. Officials of these companies appeared to possess a more affirmative attitude (coupled with outreach programs) toward Indians than officials of the other companies. Several witnesses testified that part of the failure, public and private, to employ and promote Indians can be attributed to widely held stereotypes of Indian workers. This stereotyping, which is not unlike that applied with a broad brush to other minority groups, is coupled with an almost total insensitivity to Indian culture, religion, tradition and language. It depicts Indians as poor workers with no motivation who have bad attendance records and other negative traits. Employers with considerable Indian staff, however, testified that such stereotyping is unjustified.

Another impediment to Indian employment is the somewhat dubious notion that "affirmative action" requirements are met if members of some minority groups are hired even though other minority groups are not afforded such opportunities. The fact that an employer hires members of one minority group does not lessen his obligation to provide equal employment opportunities to all groups found within the normal labor market.

Education

Indian children clearly do not attain the same level of education as non-Indian children in New Mexico and Arizona. Indian children generally are educated in one of two systems: BIA operated schools or public schools in the political subdivision where Indians reside. Very few reservations provide schools for their inhabitants. Whether in BIA schools or in public schools, the Indian children are in an environment controlled and dominated by non-Indians.

The majority of teachers and administrators in the BIA schools are Anglos. The Indian advisory boards of BIA schools are essentially powerless. In the public schools, the school boards and other policy making bodies are dominated by non-Indians. Indian children in both circumstances, therefore, attend school systems that do not respond to Indian communities. This is reflected in the failure of these systems to adopt programs and policies relevant to Indian children. Indian culture and the development of strong, positive, self images are lacking in these schools. A psychiatrist knowledgeable in this area found the school system, with its failure to respond to the adult Indian community, to blame for retarding the ego growth of Indian children--creating a feeling in the Indian child which the doctor termed "powerlessness."

The public schools were also blamed for failing to properly utilize Johnson-O'Malley funds. These funds are allocated by Congress for school districts with Indian students to supplement the education available to such students. It is alleged by many in the Indian community that the Johnson-O'Malley funds are, in fact, used for regular program purposes. Indians again find themselves impotent to influence events since they are not represented at the school board level and have no real power at the advisory board level.

Health Services

Indians in both New Mexico and Arizona receive less adequate medical care and treatment than is received by the non-Indian population in those States. Most, if not all, of the responsibility for this rests with the Federal Government. Indian Health Service officials testified during both hearings that IHS is incapable of providing adequate medical care with the present funding provided by Congress. This inadequate level of funding accounts, at least partially, for much of the criticism voiced by Indians against the Indian Health Service--long waits before receiving medical attention, rapid turnover of professional staff, cursory examinations and the failure to provide for necessary outside surgical treatment.

The funding problem, however, is not the only cause of such serious allegations made against the IHS. Other subjects include serious misdiagnosis of patient ailments and lack of understanding of Indian culture which has led to hostility and distrust between medical staff and Indian patients.

Administration of Justice

The most inferior of all court systems--in terms of their standards of fairness--are misdemeanor courts. Indians are found in this system in disproportionately large numbers, and it was alleged that they commonly receive sentences more severe than Anglos charged with comparable offenses. In urban areas, Indians are arrested at astounding rates for public intoxication and other minor alcohol-related offenses. Time and time again it was pointed out that alcoholism is a serious problem, and that inadequate facilities exist to deal with the problem. Indian witnesses complained about poor conditions in pre-trail facilities, the absence of standards of fairness within the system, and the institutions to which they are sentenced. It is this system of assembly line justice which inexorably becomes a revolving door for Indian defendants.

With problems involving the administration of justice on reservations, concern was evidenced about the limitations on tribal jurisdiction. Under Federal law, felony jurisdiction for crimes committed on a reservation is the responsibility of the Federal Government. Tribal leaders expressed widespread concern for the lack of vigor with which the United States Attorney's Office and the FBI investigate and prosecute major crimes committed on the reservation.

Water Rights

The ability of the tribes and the Pueblos in New Mexico and Arizona to ascertain the quantity of water to which they have a legal right is crucial to the development of reservation lands, the upgrading of life and in some cases the preservation of an Indian or tribal life-style. It is the responsibility of the Federal Government as trustee for Indian lands to protect these rights. This the Federal Government has failed to do.

The responsibility for the protection of Indian water rights rests largely in the Department of Interior. Much of the Federal responsibility for the development of a conflicting variety of water programs also rests with the Department of Interior.
Although different bureaus within the Department are charged with these responsibilities, the conflict of interest is fundamental and usually operates to the derogation of Indian interests. The Department of Justice, which functions as the "government's lawyer," has a concomitant responsibility to Indians, a responsibility which is often severely compromised by similar conflicts of interest.

Testimony presented by Arizona and New Mexico Indians, as well as other witnesses, depicted the prolonged and unsuccessful efforts by Indians of this region to obtain a determination of their water rights by appropriate court or legislative action on the part of the Federal Government. In the meantime, the Southwest has undergone significant growth and development. This development has been based on water, water which might have been used to develop Indian lands. Unless Indians obtain a proper assessment of their water rights, continuation of this growth pattern will inevitably be accompanied by the further erosion of Indian rights.

RECOMMENDATIONS

I. ACTION NEEDED TO IMPROVE EMPLOYMENT OPPORTUNITIES FOR AMERICAN INDIANS

A. As the largest employers of American Indians, the Bureau of Indian Affairs and the Indian Health Service should:

1. Evaluate their current promotion practices and employment data on job levels of Indian employees to assess existing barriers to equal employment opportunity for Indians at all occupational levels;

2. Prepare and implement a program to eliminate discriminatory barriers to job advancement and to undo existing patterns of underutilization of Indian employees brought about by past discrimination;

3. Wherever possible, make initial placement of Indian employees in positions with low Indian representation;

4. Facilitate transfers, increase job training opportunities, broaden job experience opportunities, and take whatever additional steps are necessary to facilitate Indian promotional opportunities;

5. Take adequate steps to ensure that private employers with BIA and IHS contracts offer effective preferential employment opportunities to Indians. Such steps should include a re-evaluation of contracts and monitoring procedures;

6. Make it manifestly clear to all supervisory level employees that Civil Service Commission regulations prohibiting harassment or retribution in any form against employees who file grievances will be strictly enforced through disciplinary action.

The Commission has found that the employment patterns in the Southwest of the Bureau of Indian Affairs and the Indian Health Service reflect underutilization of American Indians in upper level job categories and a disproportionate concentration of Indian employees in lower GS and wage board job categories. It is also clearly evident that the BIA has failed to take necessary action to ensure adequate employment opportunities for Indians with private firms operating under Bureau contracts.

The practice of private employers of hiring non-Indian crews for construction work on reservations, where unemployment rates are as high as ten times that of the national average, is unconscionable. Although there was strong evidence of such a practice, officials in the Phoenix BIA Area Office said they had never cancelled a contract or in any way penalized a contractor because of his failure to meet contractual employment obligations. One reason for this may be the difficulty in monitoring employment practices of private firms because of the weak and ambiguous language of preferential employment clauses in Bureau construction contracts. Such contracts formerly required that preference in employment be given to Indians; now, however, they require preference for "local residents."

As presently drafted, the Bureau contract does not provide the employer with a strong mandate to preferentially hire and promote Indian employees. The contract provisions should be rewritten, and the Bureau should take appropriate steps to ensure the effectiveness of its monitoring processes.

Several BIA employees testified that they had been harassed by supervisors after they had filed, or assisted others in filing, grievances, or after they had criticized a supervisor for making negative comments about Indians. The BIA, at the Washington and Area levels, should make it clear that such harassment or reprisals violate Civil Service regulations and will not be tolerated. Such allegations should be thoroughly investigated, and if substantiated, the offender should be appropriately disciplined.

B. The Civil Service Commission should adopt and maintain a program adequate to fulfill its obligation to assure equal employment opportunities for Indians in Federal employment in the Southwest. It should immediately:

1. Undertake a vigorous program of monitoring affirmative action programs of all Federal agencies within the States of New Mexico and Arizona to insure that each agency has specific plans to increase Indian employment. It also should immediately hire Indian personnel to assist in this effort which should serve as a model for other agencies;

2. Undertake an inquiry into the fairness and relevance of the Civil Service examinations vis-a-vis the American Indian. Should the inquiry find that present examinations are culturally biased and do not fairly assess an Indian applicant's abilities, they should be replaced by fair and impartial testing procedures.

The Commission found that, with the exception of the Bureau of Indian Affairs and Indian Health Service, Indians are severely underrepresented in Federal agencies in New Mexico and Arizona. It is apparent that the Civil Service Commission should immediately undertake steps to insure that its monitoring of agencies will result in programs specifically directed at increasing Indian employment. It should also provide a model for other Federal agencies through its own employment record, and toward that end, recruit more qualified Indians for its own staff.

The Albuquerque Area Manager of the Civil Service Commission testified that he did not know whether Indians have special testing problems with respect to Civil Service examinations. Obviously, the CSC should have such information and, accordingly, undertake an inquiry into the fairness and relevance of its examination vis-a-vis Indian applicants. It is imperative that there be maximum involvement of Indians in this evaluation to fairly assess the relevance of the tests.

C. The United States Postal Service should undertake steps to increase the number of Indians employed at postal facilities located on reservations and to increase the number of Indians postmasters of these facilities.

Data submitted at the Commission hearings indicated that the employment of American Indians by the Postal Service in the States of New Mexico and Arizona is minimal. In New Mexico, only 34 Indians were employed out of a staff of 2,578; in Arizona only 34 Indians were employed out of a total of 5,093. Most of the Postal Service's Indian employees are concentrated in the PFS-1 through 5 grades which include fourth class postmasters and rural carriers.

The Albuquerque District of the Postal Service covers the State of New Mexico, Southwestern Colorado and a part of northeastern Arizona, an area with a high concentration of Indians. Thirty-seven of the District's postal facilities are located on reservations. Yet only 30 of the District's 2,662 employees are Indian, and only eight of the 37 postmasters of reservation facilities are Indian. To improve this employment picture, the Postal Service should take steps now to insure that Indians will be hired in substantial numbers. The Postal Service should also adopt an Indian preference policy for employment by reservation facilities to insure that Indians will in fact be hired.

D. The Equal Employment Opportunity Commission should define the term "on or near an Indian reservation" contained in Section 703(i) Title VII to include urban areas such as Albuquerque and Phoenix within the definition, and inform employers in these areas that they may give preference to Indians in employment and take special measures to recruit Indian employees.

Testimony was given by the Albuquerque District Director of the Equal Employment Opportunity Commission that despite several requests to the Washington office for a definition of the term "on or near an Indian reservation," such a definition has not been received. He pointed out that if areas like Albuquerque and Phoenix were included, employers could make special efforts to recruit Indian employees. The Commission urges the EEOC to adopt an expansive construction of the term in view of high Indian unemployment on reservations bordering urban areas like Albuquerque and Phoenix.

E. The Arizona Highway Department should adopt and maintain a program to overcome current patterns of underutilization of Indian employees on its construction projects and maintenance crews. This program should include preferential treatment of Indian applicants by the Highway Department as well as by private firms with contracts for projects located on Indian reservations.

The Arizona Civil Rights Commission provided statistics indicating that in 1971 of the Arizona Highway Department's 4,250 employees, only 69 were Indian. Tribal leaders frequently complained about the lack of employment opportunities for Indians on highway construction maintenance crews on reservations. The State's performance should be compared with that of the Bureau of Indian Affairs which effectively employes Indians almost exclusively on its reservation road maintenance projects. Preference should be given to Indian applicants for all Highway Department positions on Indian reservations. Preferential treatment should be required of private firms on or near reservations operating under Highway Department contracts. Positions also should be made more accessible to the large number of Arizona Indians living off reservations in both rural and urban areas. Toward this end, an effective affirmative action program should be maintained by the Highway Department.

F. The Arizona Civil Rights Commission should augment its professional staff to include full-time Indian specialists to deal exclusively with Indian civil rights problems.

Sensitivity to Indian problems is urgently needed by civil rights agencies in the Southwest. Evidence indicates that private employers often feel that their equal employment obligations are met so long as their total minority employment reflects the overall minority percentage in the surrounding population, whether or not Indians are hired. It is clear that special emphasis is necessary on employment opportunities for American Indians. By its own admission, the Arizona Civil Rights Commission presently lacks sufficient personnel to serve Indians properly. It is unable to send its single Indian staff member to visit the various Indian reservations on a regularly scheduled basis. This makes it considerably more difficult for Indians to bring their civil rights problems to the attention of the Arizona Civil Rights Commission, with the result that aggrieved Indians have been afforded small opportunity for the redress of their grievances.

II. ACTION NEEDED TO IMPROVE THE INDIAN EDUCATIONAL SYSTEM ADMINISTERED BY THE BUREAU OF INDIAN AFFAIRS

A. The Bureau of Indian Affairs should make a concerted effort to:

1. Maximize the participation of Indian parents in the educational system of their children and vest more direct control over educational policies and administration of reservation and Indian boarding schools in the hands of members of Indian School Boards;
2. Substantially increase the number of Indian personnel at all levels of the BIA school system and other school systems with substantial Indian enrollment.
3. Implement Johnson-O'Malley regulations to ensure that funds provided by that program will be expended solely for programs to meet special educational needs of Indian children and to amend such regulations so as to provide that representatives of the Indian community control the use of these funds.

These three recommendations are similar to those contained in various studies and investigations in the past (particularly the Indian Education Senate Subcommittee). The minimal attention paid to education at the Southwest hearings reflects not the importance of the subject, but the fact that the ground has already been heavily covered. The above recommendations reflect the major concern of spokesmen at the hearings--the powerlessness of Indian parents. Testimony indicated that Indian parents have no control over the administration of the Johnson-O'Malley program. However, by amending regulations concerning the administration of the program, provisions could be made to assure that representatives from the Indian community would be able to control the use of these funds.

Furthermore, the JOM program is administered differently in various states. In New Mexico, for example, JOM funds are expended for supplemental programs in accordance with congressional intent; in Arizona they are not.

A Navajo witness testified that on her reservation less than one percent of the teachers are Indian. A recent report indicated that fully 25 percent of the teachers presently teaching Indian children "don't even like Indian children." Evidence indicates that Indian Advisory Boards, as presently constituted, are ineffective in placing any control of Indian education in the hands of Indian parents. Such boards do not hire or fire, they do not oversee the budget, they do not effect policy, they do not determine the curriculum; they are without any meaningful authority other than advising administrators who are free to reject their advice. Creating Indian school boards with the powers normally inherent in a school board would greatly strengthen the Indian input.

III. ACTION NEEDED TO ACHIEVE QUALITY HEALTH CARE FOR AMERICAN INDIANS

A. The President should seek and Congress should enact legislation substantially increasing funding to the Indian Health Service so that the following needs may be met.

1. Present IHS facilities should be upgraded, new facilities constructed, and the size of IHS staff increased commensurate with the needs of reservation and urban Indian communities for IHS services;
2. Contract medical care should be increased immediately to provide necessary surgery or other essential treatment to Indian people who have been required to forego such medical attention because of limited funding for contract medical care;
3. The Indian Health Service should broaden the scope of its health care to include preventive programs designed to deal with environmental conditions found in Indian communities which contribute to disease and physical disorders, and to encompass comprehensive mental health care particularly relating to the treatment of alcoholism.

The inadequate level of funding was a common point of departure for all discussion of the health care provided by the Indian Health Service. This deficiency is reflected in outmoded equipment, poor physical facilities, insufficient staff, and the inability of Indian Advisory Boards to play a meaningful role in the allocation of funds.

The inadequacy of funds for contract health care was of particular concern at the New Mexico hearing. The Commission found that funds allocated by Congress for this purpose were inadequate to permit treatment, including surgery, for all Indians who need it. As a result many Indians with ailments such as glaucoma, hernia, and gallstones are unable to receive the necessary treatment. Congress should immediately rectify this situation.

The lack of adequate programs to treat mental illness and alcoholism was a major concern of Indian spokesmen at all reservations and urban communities visited. Alcoholism is perhaps the single most important medical and social problem confronting the Indian community. Yet the attention given to this problem by the Indian Health Service has been minimal.

B. The Indian Health Service should examine its relationship with other governmental health service systems, other governmental health programs, and private health insurance plans for the purpose of developing additional sources of funds and health care for Indian peoples. These additional sources should be used to supplement and not replace regular Indian Health Service appropriations and services.

The evidence from the hearing clearly indicated that the lack of adequate funding for the Indian Health Service affected both the quality and quantity of health care for Southwestern American Indians. Consequently, in addition to recommending that the regular appropriations for the Indian Health Service be increased, the Commission believes that the Indian Health Service itself should seek additional sources of funds and health care services for the Indian community. For example, the Indian Health Service should seek expansion of inter-agency agreements involving treatment of Indian patients by veterans and military hospitals. Furthermore, the Indian Health Service should seek to obtain authorization for Indian Health Service participation in Medicare and Medicaid programs and private health insurance plans (e.g., Blue Cross and Blue Shield).

C. To insure the full and equal access by American Indians to all public health facilities:

1. The Office for Civil Rights of the Department of Health, Education, and Welfare should investigate possible violations of Title VI of the Civil Rights Act of 1964 with respect to the denial of equal access by American Indians to county hospitals that refer Indian applicants to Indian Health Service facilities;

2. The Indian Health Service should amend its contracting procedures with county and private hospitals to insure that contract care is administered to Indian patients in a nondiscriminatory fashion, and the Indian Health Service should, pursuant to contractual provisions, take direct and immediate disciplinary action when necessary.

Several witnesses testified at the Albuquerque hearing that Indians waited longer periods of time than non-Indians to see physicians at the Bernalillo County Medical Center which is under contract with the Indian Health Service to provide medical care to Indians. IHS contracts with private or public facilities should state unabmiguously that Indian patients are to be treated in a nondiscriminatory manner. The contract should also identify sanctions ranging from withholding payment to cancellation. The Indian Health Service should also designate a specific official to be responsible for monitoring the treatment of Indian patients at contract care facilities and investigating complaints of mistreatment.

A double standard in the treatment of Indian patients by private or public hospitals, whether under contract with the IHS or not, would appear to be in violation of Title VI of the Civil Rights Act of 1964. The use of Hill-Burton funds in hospital construction and the administration of medicare programs brings most hospitals within the ambit of Title VI. Witnesses in Arizona complained that county hospitals and Veterans Administration hospitals, in some instances, would refer Indian applicants to IHS facilities rather than admit them. The Office of Civil Rights for the Department of Health, Education, and Welfare should investigate possible patterns of such violations by hospitals in communities with large Indian populations. The Indian Health Service should refer evidence of such practices to HEW's Office for Civil Rights.

D. Although the Secretary of HEW could exercise his authority in this area, Congress should insist on the extension of full recognition of the rights of nonreservation Indians for health care by enacting a clear mandate to the Indian Health Service to find means through appropriate mechanisms to provide medical care to all American Indians regardless of where they live. To ensure that the quality of health care currently provided by the Indian Health Service is not diminished by expansion of that agency's responsibilities, legislation should also provide budget increases to meet additional costs.

Although testimony at the Phoenix hearing indicated that Phoenix urban Indian residents are currently receiving health care from the IHS, these services could be terminated if inadequate funding should require a reduction of IHS services. The position of the Indian Health Service, that priority be given to reservation residents, is a matter of long standing debate which should be clarified by the Congress. That clarification should be all-inclusive rather than restrictive: Indians should not be denied their right to special Federal benefits and services because of their choice of residence. It is essential, however, that implementation of this recommendation not detract from the funds available for the care of those currently served by the IHS. The need for additional funds is particularly important in light of the inadequate level of current funding for IHS.

The significance of this recommendation is underscored by a recent holding of the Ninth Circuit Court of Appeals in Ruiz v. Morton, that the Bureau of Indian Affairs may not deny an Indian general assistance benefits simply because he does not reside on a reservation. The case held that the restriction of Federal services is inconsistent with the congressional intent, as contained in the Snyder Act (25 U.S.C. §113), to provide benefits for all needy Indians.

E. The Indian Health Service should expand orientation programs to acquaint non-Indian professionals with Indian culture, customs, and beliefs in close collaboration with Indian Advisory Boards, tribal leaders, and other Indians knowledgeable about Indian culture. The Indian Health Service, should deal quickly and severely with substantiated complaints of disrespect shown by professionals toward Indian patients or their culture.

Several witnesses testified that Indian Health Service (IHS) professionals are often inadequately acquainted with Indian culture, ways, and beliefs. There was evidence that within the past year the Albuquerque Area Office of the IHS has improved its orientation program, but it is clear that more can and should be done. IHS should consult the Indian Advisory Boards, and other relevant Indian groups to produce better orientation programs, which would result in more effective medical treatment. IHS officials should emphasize to professional staff that cultural awareness programs are a significant part of their ability to effectively serve Indian communities.

IHS should make it clear that professionals at all times are to treat Indian patients with dignity and respect. Testimony presented at the hearing indicated that some IHS professionals do not treat Indian patients with dignity, and that Indian patients often feel these professionals do not believe them when they describe their ailments. Other testimony, as well as interviews, indicated that on several occasions IHS staff displayed outright disrespect for Indian culture and Indian people. Professionals should be clearly told that violations of standards of conduct for professionals will result in appropriate sanctions. Such corrective action should be reported to the patient subjected to such treatment.

F. The Indian Health Service should establish a clear line of responsibility, at both the service unit level and the area office level, for receiving and processing complaints from patients and employees. Such a complaint unit also should be accountable to tribal health committees and Indian advisory boards with whom clear lines of communication should be established.

Both patients and employees of the Indian Health Service expressed several areas of concern regarding the administration of the Indian Health Service and the delivery of health care including the following:

long waiting periods, indifferent and disrespectful treatment by professional staff, severe transportation problems, inadequate facilities, unsettled issues of eligibility, low level employment status of the vast majority of Indian personnel, absence of Indian supervisors, and low employee morale. Indian witnesses felt there was little hope of relief for these problems. Commission staff investigators were told that complaints of patients and employees are either shifted back and forth between the service unit office and the area office, or met with silence. Tribal leaders also complained that they are unable to communicate effectively the complaints of tribal members with responsible IHS officials. If these problems are to be solved, it is essential that IHS clearly identify personnel who will be responsible for the investigation of complaints, determination of an appropriate remedy or response, implementation of the remedy, and reporting such action to the complainant and tribal leaders. The following recommendation is, therefore, made:

G. The Indian Health Service should appoint Indian personnel at each service unit facility to receive and attempt to resolve complaints of patients. Such personnel should have full power to meet with staff, should be given full support by the service unit director and the area office, and should report only to the Area Director.

A severe limitation in the present complaint procedure results from the difficulty that Indians unsophisticated in the system experience in attempting to bring grievances to the attention of Indian Health Service administrators. Since they are unfamiliar with bureaucracy and inclined to avoid a hostile atmosphere, Indian patients usually do not voice their complaints. Indian patients and employees would be more willing to bring their problems to an Indian representative who spoke their language and on whom they could rely for understanding. Many difficulties which result from a lack of communication could be solved through the efforts of such a representative.

H. Indian allegations of severely substandard medical practice by Indian Health Service physicians should be promptly investigated by an independent authority. Consideration should be given to consultation by impartial outside physicians. Should the investigation indicate that the particular practice was, in fact, substandard, appropriate disciplinary action should be taken.

The Commission heard from several witnesses in New Mexico and Arizona who alleged substandard medical treatment, particularly poor diagnoses, by IHS physicians. It is difficult, if not impossible, for laymen to assess the adequacy of medical treatment. Moreover, the Commission did not have enough information to determine if these instances were part of a larger pattern. Sufficient evidence was received, however, to conclude that there is widespread concern among Indians in the Southwest for what they feel is malpractice by IHS doctors. To assure impartiality, allegations of substandard medical practice should be thoroughly and vigorously investigated by an authority independent of the IHS. If such investigation should indicate that the practice was, in fact, substandard, IHS should take appropriate action, from oral reprimand to dismissal. The results of any investigation should be reported to the patient involved and to concerned tribal officials.

VI. ACTION NEEDED TO IMPROVE THE ADMINISTRATION OF JUSTICE AS IT AFFECTS INDIANS LIVING IN THE SOUTHWEST

A. The Civil Rights Division of the Department of Justice should conduct an investigation into the treatment of Indian prisoners by local law enforcement agencies in the State of Arizona to determine whether Indian prisoners are being used for public labor in a manner which violates Federal peonage laws or whether they are in any other manner mistreated in violation of Federal civil rights legislation.

Testimony during public sessions and field interviews revealed a deep concern for the treatment of Indian prisoners, particularly by law enforcement officials in small towns bordering the reservations. Police brutality, double standards in sentencing, and poor jail conditions were the subject of complaints in several areas. Witnesses from the South Tucson area alleged that only Indian prisoners are used for public labor. The Commission is particularly concerned by allegations that during certain times of the year, when public labor is in greatest demand, Indians are arrested in larger numbers to fill this need.

B. The Department of Justice should increase the staff assigned to investigate and prosecute violations of Federal crimes on reservations.

Inadequate enforcement of felony criminal jurisdiction on reservations was a concern common to most reservations visited by Commission staff. The responsibility for such enforcement on most reservations rests with the Federal Government pursuant to the Major Crimes Act (18 U.S.C. 1153). Testimony by tribal law enforcement officials evidenced a widespread feeling that Federal law enforcement personnel are "too overburdened by other duties" to provide adequate law enforcement services to reservation residents.

C. Where the tribal justice systems are consistent with constitutional safeguards consideration should be given to permitting Indian tribes to exercise criminal jurisdiction over both Indians and non-Indians for mesdemeanor violations of tribal law.

Testimony indicated that non-Indians who commit misdemeanors on reservations are not subject to prosecution by tribes. Prosecution of such offenses in state courts have not met with much success.

D. The Law Enforcement Assistance Administration of the Department of Justice should take appropriate steps to provide funding for necessary rehabilitation services in correctional facilities in which Indians are confined.

Testimony highlighted the gross inadequacies of those correctional facilities in which many Indians are incarcerated. Rehabilitative services are frequently either non-existent or inadequate in such facilities.

V. ACTION NEEDED TO PROTECT INDIAN WATER RIGHTS

A. Congress should immediately order and provide funding for an inventory of Indian water needs for present and future economic development. Furthermore, Congress should enact legislation requiring an impact statement on the extent to which Federal programs or expenditures will affect Indian water rights and needs.

Testimony to the Commission as well as staff investigation amply demonstrated two facts: (1) the necessity of making an inventory of Indian water needs as the first step toward protecting Indian water rights, and (2) the inability of most tribes to fund such an inventory. The government is the trustee of Indian property, including water rights, and it is incumbent upon the trustee to make an accurate inventory of the trust *res*. Congress should fulfill this obligation immediately and provide adequate funding for such an inventory. The Federal Government cannot effectively exercise its responsibilities for the preservation and protection of Indian water rights without knowing the potential impact of Federal programs or expenditures on these interests.

B. To the extent that Indian water rights have been derogated by governmental or individual action, Congress should provide appropriate restitution to the Indian tribes affected. Congress should also take appropriate action, under its plenary power, to reverse such governmental or individual action and restore to the affected tribes their water rights.

Several Indians testified to the Commission that tribal water rights had been derogated by governmental projects (such as reclamation projects) or individual encroachment. The trustee, the United States Government, is responsible for preservation of the trust property and should be held accountable for any loss caused by such actions, and provide appropriate restitution. Moreover, to the extent that derogation of water rights continues, the Congress should exercise its plenary power to reverse such action--whether through legislation directly affecting Indian tribes or legislation directing the Attorney General of the United States to undertake appropriate litigation.

C. Congress should act favorably upon the proposal for the establishment of an Indian Trust Counsel Authority, or enact other appropriate legislation to establish a separate agency with the sole duty of preserving and protecting Indian property rights, including water rights, so that a conflict of interest in this area no longer prevails. This agency must be guaranteed sufficient staff and funding to compete with the legal staff of the Interior Department.

Both Indians and government officials made it clear that there exists within the Department of the Interior and the Department of Justice a conflict of interest inhibiting those agencies from vigorously and unqualifiedly preserving and protecting Indian water rights. Although there has been established within the Department of Interior an Office of Indian Water Rights, such action can in no way be viewed as eliminating the conflict, since the office is still within the Department and is, by the admission of its Director, underfunded to do the job. Until a separate agency is created with the sole duty of preserving and protecting Indian property rights, there is little hope for effective action in this regard. Unless the new agency is guaranteed necessary resources, it will not be able to realistically represent Indian interests in complex resources litigation.

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